

THE NATIONAL PUBLICATIONS SOCIETY  
SERIES NO. 1.

**PROVINCIAL AUTONOMY**  
(Under the Government of India Act, 1935.)

by  
**K. T. SHAH**



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**VORA & Co., PUBLISHERS, LIMITED,**  
8, Round Building, Kalbadevi Road,  
**BOMBAY.**

**First Edition**  
**February 1937**



To,

**C. S. P.**

*(In Gratiam & Memoriam, 28-8-36.)*



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## PREFACE

This volume is the first of a Series of National Publications regarding the several Institutions connected with the Public Administration of this country,—both official and non-official—which concern intimately the governance of the country. Beginning with a study of the new Constitution, the subjects for the Monographs in the Series will, it is intended, be so selected and written up, as, in their aggregate and viewed collectively, would help to show the inherent weakness or obstacles, in the present system of administration in the country, which inevitably obstruct the realisation of *Purna Swaraj* and the accomplishment of the material well-being of the people collectively. The Series as a whole must, likewise, be so coordinated as to indicate readily wherein changes, if effected, could enable those very Institutions to promote most effectively the collective well-being of the people of India.

Though each Monograph in the Series would be on a definite subject,—a specific Institution or Organisation,—it will form an integral part of the entire Series. Each volume will, in its main part, be an objective, analytical, and comparative study, *i. e.* after describing the origin and function of each Institution studied, it would explain how the corresponding Institution functions in other progressive countries of the world, and what part it plays in the social life of those communities. In its main part, therefore, each Monograph will avoid any infusion of partisan sentiment or political bias, consistent with the fulfilment of the principal aim of the entire Series.

This ideal for the writer of each work would be facilitated by the plan of entrusting it to the Editors of the Series to show, in an Introductory Chapter to each

volume, what part the Institution studied in the main portion of the Monograph fills in the everyday life of the Indian people; and to indicate, in a concluding Chapter, the changes or modifications in the constitution and working of the given Institution, which, in the opinion of the Editors, would best serve the needs of a community aiming at socialising all material wealth, and all means of production, distribution, and exchange of such material wealth.

The Series, as a whole, is undertaken to be published by a Registered Society, the Constitution, Aims and Objects, and the Rules and Regulations of which will be given at the end of Volume II of this study of the constitution. A list will also be appended there of the several Institutions and Organisations the Society intends to get written upon. The List, it need be hardly added, is neither exhaustive, nor final. It is purely illustrative. The order given there is, likewise, no indication of the real importance attached to each study from the point of view of the social and political reconstruction aimed at by the Society. It is merely a matter of convenience in taking up for study the several Institutions and Organisations, and of keeping them coordinated in a common plan.

The Central and ultimate aim of the Society is to strive for a social system in this country which would have all the means of producing, distributing and exchanging material wealth socialised. To accomplish this objective, the Society seeks to educate public opinion by means of these Monographs, so that, if and when the desired goal is reached, it would be reached by peaceful, non-violent means; and would, at the same time be more substantial and deep-rooted than social innovations born

of revolutions usually are. When the Indian people have at last acquired the substance of power in the conduct of their own affairs, they will find it both economical and advantageous to have some readymade programme of national reconstruction before them, so that the appropriate organ of the people's sovereign will can, after due deliberation and the necessary modification, start upon the real task of translating swaraj into actual conditions of life. The suggestions in the concluding chapter of each Monograph will, it is hoped, provide a good basis for such a concrete programme of national reconstruction.

In order the more effectively to educate public opinion in this country, each Monograph in the Series is intended to be translated in the principal Indian languages, so as to educate the masses, and make them judge for themselves regarding the suitability of the social organisation and ideals propounded in this Series. That the translations should follow as closely as possible the appearance of the original volumes in English, the Society intends to engage the services of its own staff of translators, unless it can find provincial or linguistic Organisations ready and willing to take off its shoulders this very onerous but indispensable duty.

The Society will endeavour to secure writers who have made a special study of a given Institution to write upon it. But, given the objective of the Society; and given the unfortunate conditions of this country, wherein the leading scholars and thinkers in the country have to be dependent upon an unsympathetic bureaucracy for their daily bread, it is not unlikely that, were the Society to depend wholly upon such outside writers to do its main work, it would be unable to keep to anything like a predetermined programme or time table. Hence, in every

case where the aid from such unconnected writers fails, the Society will endeavour, nevertheless, to keep to its programme, by means of regularly paid research assistants working in the Editorial office on a definite plan.

It is the fervent hope of the organisers of the Society to complete the first part of their work,—*i. e.* an analytical, comparative, and critical study of the principal administrative Institutions and other Organisations affecting the public life of this country,—within not more than four years. This time-limit is self-imposed, but not quite as arbitrary as it may seem at first sight. Assuming that the first Legislatures in the country under the new Constitution would be unable to achieve any constructive good for the collective welfare of the people of India, and given a normal life of 5 years for these first Legislatures, a programme of constructive work must be ready and clearcut before their successors come into office, as it were, for the following quinquennium.

The Series, it need hardly be repeated, is so planned that, taking the concluding Chapter of each Monograph, detailed suggestions will be found ready made for reforms or modifications in each Institution or Organisation studied, so as to provide a complete plan of national economy, in all its details. Of course, such a plan would be open to adjustment and improvement in individual particulars. But, rather than set about framing a plan of work for the country when its chosen representatives have at last acquired a substance of power in the governance of their country, the promoters and organisers of this Society believe it would be really helpful if a ready-made programme of national economy were provided, however open it may be to improvement or adjustment in individual particulars.



Though one of the Editors of this Series is President of the Indian National Congress, and another a member of its Working Committee, the comments and criticisms contained in this Volume, or the views and opinions expressed even in the Introductory and concluding Chapters, in subsequent volumes, will reflect, it is but just to add, only the personal opinions of the writers; and in no way bind the Congress, or reflect its opinion on given topics.

The present Monograph is the first in the Series of National Publications. It contains an analytical study of the system of Provincial Autonomy claimed to be introduced by the new Constitution Act of 1935. It is not a purely academic, nor a juristic study of the new Constitution, nor a compendious commentary on the text of the Act for use by the constitutional lawyer. It is rather an attempt at explaining the mechanism of the new Constitution and the hidden springs of its working, which is of the utmost importance at the present juncture in this country's constitutional evolution. A systematic study of the Constitution ought, it is true, to have commenced with Section 1 of the new Act, whereas the present volume begins, so to speak, in the middle of the Act with Part III. The explanation of this anomaly is to be found in the topical importance of the question of Provincial Autonomy, in view of the General Elections being held for the first Provincial Legislatures under the new Constitution.

The same consideration may also explain the absence of those distinguishing features of the Series in this Monograph,—*viz.*, the Introductory and Concluding Chapters in the Monograph,—which would constitute the real contribution by the Society towards a proper under-

standing of the new system of governance in India; and an indication of the needs of this country in regard to a Constitution in general. A Constitution, it need hardly be observed is only a tool, a means, a framework, to enable a community to attain its objective of social organisation and human effort with the greatest ease. To what extent this Constitution would help the Indian people to realise their collective consciousness and to attain their social ambitions; and what changes would be necessary in the Constitution Act of 1935 to enable the Indian people to affect the indispensable social reconstruction, would be the function of such Editorial Contribution. As, however, two of the three Editors are occupied with the General Elections, they could not find the necessary time to think out and prepare the Chapters in the Series which would ordinarily be jointly contributed by them. It has, therefore, been decided to treat the present Monograph as only the first part of a double-volumed study of the Constitution. The second volume would not only contain a study of the Federal structure and other parts of the governmental machinery imposed by Act of Parliament upon India, and examine their future working; it would also contribute in a consolidated form the two important Chapters omitted from this Volume, so as to put forward the N. P. Society's idea of constitutional reconstruction needed to enable India to enjoy the fullest national independence, the political frame work which would help her to shape her own new social system as may seem best to the people of the country, or to their trusted leaders and chosen representatives.

In itself, also, the present Volume is open to certain criticisms which the writer can only apologise for on the ground of the conditions under which the work had

to be got ready and seen through the press. The lack of uniformity, for instance, in the place given to the actual terms of the Constitutional Law,—sometimes in the body of the work, sometimes in foot-notes,—is an outcome of the plan adopted for treatment in this Volume, which, as already observed, is not a study of the Constitution Act for the benefit of the University Student, or the juridical exponent, or the legal practitioner. It is a study intended mainly to serve the need of the moment, as the writer conceives it. As such, it is likely to suffer from some defects of form and treatment, which have been just instanced. Admitting and apologising for these, the writer is not without hope that, notwithstanding the obvious limitations or shortcomings of the work, even the classes of its readers not primarily intended to be catered-for will find something of interest, something by way of new information, or at least a new presentment of the facts, which may help them also to understand the Constitution better, from their specialist point of view.

Bombay, January 25, 1937.

K. T. SHAH.



# PROVINCIAL ADMINISTRATION IN INDIA.

## CHAPTER I.

### EVOLUTION OF INDIAN PROVINCES.

**Governors' Provinces:** Under Section 46 of the Government of India Act, 1935, the following have been described as *Governors' Provinces viz.* Madras, Bombay, Bengal, the United Provinces, the Punjab, Bihar, the Central Provinces and Berar, Assam, the North-West Frontier Province, Orissa, and Sind. Burma is specifically excluded from India, as also Aden (Sec. 288).

**Chief Commissioner's Provinces:** Under Section 94 of the same Act, British Baluchistan, Delhi, Ajmer-Merwara, Coorg, and the Andaman and Nicobar Islands, as also the area known as Panth Piploda, are classed as Chief Commissioners' Provinces.

Between these two classes of Provinces, there is the essential difference,<sup>1</sup> viz., that, whereas the Governors' Provinces become self-governing units under the conditions and limitations laid down in the Act of 1935, the Chief Commissioners' Provinces are to be administered, even under the new Constitution, by the Governor-General, acting, within defined limits, through a Chief Commissioner in each case. This officer is appointed by the Governor-General, acting "in his discretion" i. e. without

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1. The old distinction between Regulation and Non-Regulation Provinces, between Presidencies and other Provinces, between Governors', Lieutenant-Governors', and Chief Commissioners' Provinces is now no longer any significance in the scheme of Indian Government.

any reference to or consultation with his responsible Ministers or Advisers<sup>1</sup>. Except Coorg, which may be given a Legislative Council of its own,<sup>2</sup> none of the Chief Commissioners' Provinces will have a responsible Local Government of their own. All these Provinces,—except the Andaman and Nicobar Islands,—are given representation in the Federal Assembly and the Council of State.<sup>3</sup>

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1. Sec. 9 (1).
2. Sec. 97.
3. Sec. 18. schedule 1, 25 and 26 Ges. V ch. 42.
- (1) There shall be a Federal Legislature which shall consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly (in this Act referred to as "the Federal Assembly").
- (2) The Council of State shall consist of one hundred and fifty-six representatives of British India and not more than one hundred and four representatives of the Indian States, and the Federal Assembly shall consist of two hundred and fifty representatives of British India and not more than one hundred and twenty-five representatives of the Indian States.
- (3) The said representatives shall be chosen in accordance with the provisions in that behalf contained in the First Schedule to this Act.
- (4) The Council of State shall be a permanent body not subject to dissolution, but as near as may be one-third of the members thereof shall retire in every third year in accordance with the provisions in that behalf contained in the said First Schedule.
- (5) Every Federal Assembly, unless sooner dissolved, shall continue for five years from the date appointed for their first meeting and no longer, and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

**New Provinces created hereafter:** Subject to the provisions of Section 290 of the Government of India Act, 1935, His Majesty is empowered, by Order in Council, to create new Provinces, to increase or diminish the area of any such unit, or to alter its boundaries<sup>1</sup>.

**Differences between Provinces:** Even apart from this constitutional difference between the Governors' Provinces and the Chief Commissioners', there are striking differences between the several units within each of these two categories. In area, in population, in wealth or resources, these Provinces differ *inter se* most markedly, as is but too clearly evidenced by the Table attached. Historically they are not all of the same antiquity; politically, not of the same importance; geographically, not of the same configurations; economically, not of the same level of development. Whatever their individual past in the crowded annals of Indian history,— and it is questionable if in their present form each of these had a historical individuality at all— in the British period each of these units has been the creation of the Central Government, almost exclusively for administrative convenience. Without going into the juridical complications, and constitutional niceties, regarding the right and title of the British Parliament, or of the British Sovereign, to create new Provinces in India,<sup>2</sup> or dismember old ones;<sup>3</sup> to take

1. It is open to question if there is any power to change the status of a Chief Commissioner's Province into that of a Governor's Province, or vice versa, though, of course, under the power to change the boundaries, and create new Provinces of any status, any area administered as a Chief Commissionership may be raised to be a Governor's Province; while the entire Constitution may be suspended (Sec. 93 *Ibid.*) in a Governor's Province; and so the dividing line may be abolished.

2. e. g. Eastern Bengal and Assam, in 1905.

3. Orissa separated from Bihar, or Sind from Bombay, in 1936-37.

away what has for the greater part of a century been part of India,<sup>1</sup> or add what have all through recent history remained apart from the British Indian polity,<sup>2</sup> the fact must be emphasised that the existing Indian Provinces are the creatures of the Central British authority in India, and the driving force leading to the institution of each such unit has been rather political expediency or administrative necessity, than any recognition of historical individuality, geographical sympathy, or even of the principle of self-determinism by distinct peoples or communities.

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1. e. g. in Burma, in 1936-37.

2. Some districts in the N. W. F.



Table I. Provinces of India, their Area, Population, Revenues, Wealth

Name of Province	Area in Sq. Miles	Population	Revenues (in Rs. thousands)	Expenditure	Wealth in Crores.
<i>Governors' Provinces</i>					
1. Madras	142,277	46,740,107	16,40,25	15,63,04	151.91
2. Bombay	77,221	17,992,053	15,25,17	14,98,95	176.54
3. Bengal	77,521	50,114,002	9,38,04	10,67,83	189.63
4. United Provinces	106,243	48,408,763	11,45,21	11,29,93	215.64
5. Punjab	99,200	23,580,852	10,23,92	10,06,41	185.87
6. Bihar	42,335	25,727,500	5,05,83	5,00,48	157.00
7. Orissa	13,706	5,306,142			
8. Central Provinces & Berar	99,920	15,507,723	4,49,79	4,49,44	80.85
9. Assam	55,014	8,622,251	2,10,67	2,36,47	44.91
10. N. W. F. Province	13,580	2,425,076	1,60,11	1,58,16	10.68
11. Sind	46,378	3,837,070			99.37
<i>Chief Commissioners' Provinces</i>					
1. Baluchistan	54,228	463,508			
2. Ajmer-Merwara	2,711	560,292			
3. Coorg	1,593	163,327	11,78	13,59	
4. Delhi	573	636,246			
5. Andamans & Nicobars	3,143	29,463			

*Note :* The Area and Population figures in the above Table have been compiled from the *Statistical Abstract for British India*, Twelfth Issue, the population figures being in accordance with the Census of 1931. The Revenue and Expenditure figures are taken from the same source and relate to 1932-33; while the figures for the wealth of each Province are taken from the *Wealth and Taxable Capacity of India*, by K. T. Shah and K. J. Khambata. They relate to estimates prepared on the basis of quantity figures of the several crops and industrial products, converted into money terms on average prices between 1900 and 1921. The revenue and Expenditure figures for Bombay include Sind, and for Bihar include those for Orissa; while the wealth figures for the latter province are also inclusive of Orissa. There has been an immense depression in the wealth of the Agricultural Provinces since 1929, owing to a heavy slump in prices; and the figures in the last Column must be very much lower if the estimates were more up-to-date.

Bengal and Bombay (minus Sind) are about the same in size; but Bengal has three times the population of the Western Presidency, though only about 7% more of the material wealth. The Eastern Presidency's revenue resources seem to be about 60% of those the sister province in the West. Though Bombay's aggregate revenues may diminish by the separation of Sind, the relative position in point of revenue would remain undisturbed as compared to Madras. In area, Bengal has about 55% of that of Madras, though in population it is 10% more crowded than the Southern Presidency. Punjab has half the population of the United Provinces, though only about 7% less area, 15% less total wealth, and 10% less revenue resources. The rate of development seems far more rapid in the Northern satrapy than in the United Provinces. The five major Provinces command more than 4 times the financial strength than their 6 weaker neighbours put together, while a Province like Madras may be said to exceed by itself the total revenue strength of all the lesser Governors' Provinces and Chief Commissionerships put together. Industrialisation is changing rapidly the face of some of the agricultural provinces; while the more recent developments in Irrigation on the larger rivers of Sind and the Punjab, combined with the new means of transport, fairly promise to modify materially the relative economic position of these units, if they can fully avail themselves of opportunities said to be open to them under the Act of 1935.

### Origin of Provinces

**Madras:** To appreciate more fully the meaning of these inherent variations in the size and strength of the several Governors' Provinces, a brief historical review of the origin of these Provinces would not be out of place.

Though the earliest British settlements were on the Western Coast, the first Province to attain anything like its present size and importance was Bengal. Thanks to the acquisition of the Diwani,—or the right to collect and receive the revenues of the three Mughal Subahs of Bengal, Bihar and Orissa, in the name of the Mughal Emperor,—that area received an organisation and importance long before the other centres of British power obtained such recognition. At the time of the Regulating Act, that Province was, accordingly, given a primacy, which endured for 138 years, mainly because of the association of the Government of Bengal with the Government of India. That, association, while useful materially, was technically fatal from the stand-point of the recognition of the provincial individuality.

Madras and Bombay were, accordingly, the first provinces to reach the rank of distinct Presidencies, ever since the beginnings of organised government of the territories under their respective charge. As between these two, again, Madras attained practically its present size since the defeat and destruction of Tippu Sultan of Mysore, 1799. Minor changes of boundaries have, no doubt, occurred since. But the Presidency of Madras has, in the main, remained as it was formed in 1799. With a coast line of over 1700 miles; with numerous rivers flowing through the main districts of the Province, and enriching them through innumerable irrigation works, by regular and plentiful crops of rice, cotton, sugar-cane, ground-nut; with vast luxuriant groves of the cocoa-nut and other palms, and rich plantations of tea and coffee and rubber on its highlands, Madras is mainly an agricultural Province, having numerous outlets for its produce to the east as well as the west. By religion, too,

it is a fairly homogeneous unit, since only about 7% of the population are Muhammadans, and about 3.80% Christians.

Linguistically, and also socially, however, the Province has its own problems. 18.56 million speak Tamil, and 17.74 million speak Telugu, accounting for nearly 80% of the population. The Telugu districts lie mainly north of the Cauvery, stretching along the eastern sea-board to the confines of the Province. The Tamil-speaking districts, on the other hand, lie in the south and centre of the Province. Malayali districts, with 3.72 million people, are in the south-west, and the Kanarese Districts in the North. The main linguistic divisions are thus clearly marked off from each other. There is a definite demand of the Telugu-speaking areas to be made into a separate Province of Andhra. It has been voiced on more than one occasion by formal resolutions passed by a good majority in the Madras Legislative Council. The Malayali and Kanarese districts may also have such separatist tendencies; but they do not form such large numerical blocks, nor are perhaps so compactly situated, as to justify a demand for separate provincial organisation. If the principle of Linguistic reorganisation of the Provinces of India is to be adopted, these regions will have to be regrouped with others of their kind now in Indian State territory. This, however, would involve a degree of uniformity in the governance of Indian States with that in British India, which is at present utterly unacceptable to the Indian States.

Besides the linguistic divisions, there is the social problem. Nowhere, perhaps, in India is the curse of Untouchability so heavy as in Madras.  $7\frac{1}{4}$  million of its total population of  $46\frac{3}{4}$  millions are regarded practically

as untouchables, or depressed classes. These, it may be added, are found, in the largest proportion in the Tamil districts. It is, however, impossible to make these classes into a separate province by themselves, not only because they are too scattered to afford the necessary unity, but also because they are too poor and backward to benefit by a separate provincial existence. To organise them separately would, moreover, mean a recognition of the accepted and abiding character of these social distinctions which cannot be welcome to any thoughtful person. They have no independent culture of their own to develop, nor distinct economic possibilities to fulfill. The case is, however, different if we consider the broader division between Brahmans and non-Brahmans, the former being little more than 15% of the population of the Province, and yet commanding over  $\frac{3}{4}$  of the wealth and opportunities. But these, also, cannot be separated into distinct administrative units for the same reason of inextricable mixing of the Brahman and non-Brahman elements. The divergence of interests between these two sections of the Hindu population in Madras is, however, more artificial than real, a temporary phase which must disappear the moment more natural lines of social cleavage make themselves manifest.

Except, therefore, for the separation of the Telugu from the Tamil districts; and a regrouping of the Malayali and Kanarese speaking peoples, there is little to justify a more intensive dismemberment of this Province.

**Bombay:** The Presidency of Bombay was formed, in its present size, about 1818, when the last of the Peshwas was finally overcome, and the Maratha Empire became a thing of the past. Sind was added to it in 1843, simply

because it was more convenient of approach by sea from Bombay, than from any of the other then existing British Provinces. The Punjab was not yet conquered, and the United Provinces were separated from Sind by an arid, trackless desert, stretching for hundreds of miles, and including territories of Indian States, which were not yet all so utterly subordinate and easily accessible as they have since become. As, however, Sind has now been separated from Bombay, and made into a separate Province, the fact of the differences of Sind from the Presidency proper need not now engage our attention.

In the remaining districts of the Province, there are at least three linguistic groups, definitely marked off from one another, and corresponding to the three administrative Divisions of the Presidency, *viz.*:—the Northern Division, or Gujerat; Central Division, or Maharashtra; and the southern Division, or Karnatak.

The city of Bombay is *sui generis*. With about 6% of the population, it has nearly  $\frac{1}{2}$  the wealth of the presidency. Its population is mixed; its culture (?) complex and exotic; its requirements and possibilities for economic development radically different from those of the other parts of the Province. Even geographically it is separate,—an island linked to the mainland by one causeway and two railways.

Of the 17 odd million people in the Presidency proper, 93.36 lakhs speak Marathi, 34.26 lakhs speak Gujerati, 25.98 lakhs Kanarese, and 13.99 lakhs western Hindi. This last group is centred mainly in the districts

of Khandesh, which have more affinity with parts of the Central Provinces than with Bombay proper.

These linguistic areas of the Bombay Presidency have distinct cultural and economic characteristics, which stamp on each such area an individuality of its own. The Gujarati speaking peoples live in a fairly rich area of productive land, the value of which is enhanced considerably by their immemorial trend towards commerce. Gujarat is a province of shop-keepers par excellence, including in that term both traders and industrialists. Even in Bombay City, the trade and Industry are held almost exclusively by Gujarati speaking peoples. Culturally, economically, geographically, this is a distinct Province, whose local consciousness has of late grown to such dimensions that the Gujarati-Marathi rivalry in the public life of the Presidency is becoming a prominent feature, and is causing grave uneasiness as to the future of the Presidency if kept in tact in its present form.

The Marathi speaking peoples number 93.36 lakhs, or more than half the population of the Province. Unlike Gujarat, Maharashtra is mainly plateau land, situated on the leeseide of the Western Ghats, and so deficient in rainfall, which makes cultivation,—initially difficult because of the poverty of the soil,—more arduous because of the inadequacy of the water-supply. The region is therefore, mainly agrarian, with supplementary cottage industries that can hardly hold their own in these days of fierce competition with machine-made goods. Even in commerce, the Maharashtrians are backward, if not unknown. Their tradition and history incline them more to Government service and the new professions, than to any private enterprise of their own initiative. Their earlier



initiation into English education and British administrative methods, make them appreciate all the more keenly the advantages of material wealth open to the modern entrepreneur in mechanised industry and overseas commerce. Hence they subconsciously resent all the more keenly the advent of competition from their later educated fellow citizens in fields of service and professions, which had, until comparatively recent times, been almost their monopoly. The social problem in Maharashtra is not complicated, perhaps, to the same extent by the presence of a large number of the Depressed Classes, as in Gujerat. But the Brahman-non-Brahman rivalry seems to be almost as indigenous to the soil in Maharashtra as in Madras. Certainly it has been fanned into a fierce flame in recent times, and threatens to rend asunder the province, unless the artificial stimulus to such unnatural divisions is effectively counteracted.

The Kanarese speaking districts have also an individuality of their own, though they are numerically much fewer, and economically, perhaps, not so distinct an entity as the peoples of Gujerat and Maharashtra. Unless a regrouping of territories takes place with due regard to ethnic or linguistic solidarity and economic unity, at an early date after the advent of the Federation, these regions and the peoples inhabiting them might find it difficult to realise their separate individuality, and the distinct economic or cultural possibilities of their geography or history. But the consciousness of individuality is there, and rapidly growing; and the perception of the injustice usually felt by a backward minority is not the less keen, because it is not so vocal as that of Sind *vis-a-vis* the Presidency proper, or of Gujerat against Maharashtra, and *vice versa*.



The Konkan,—a strip of land at the foot of the Western Ghats, running along the seashore,—has climatically the most marked individuality of its own, thanks to the full blast of the South-Western Monsoon that it is exposed to. But the population of this region is too small, and its economic possibilities too restricted, to permit of a reasonable demand for separate political organisation.

On the whole, then, the present Bombay Presidency has in it at least four distinct provinces, on definitely marked linguistic and economic lines. If to these we add the city of Bombay, with its suburbs stretching some 20 miles from its northern limits,—and which has an unquestionable individuality of its own, socially, economically, as well as historically,—it is possible to split up the present Presidency into at least five distinct, more rational and homogeneous units than the existing medley of historical accident and administrative convenience.

**Bengal:** The earliest of the Provinces of British India, Bengal has, however, undergone more changes of boundaries than any other province of a comparable size and history. Recognised as the premier Presidency by the Regulating Act of 1773, Bengal was enriched, at various dates, by the additions of Agra, (1805), and Assam (1825), not to mention the addition, for a brief while, of Oudh (1856) and the present Central Provinces (1853), and part of Burma (1824-1853). Bihar and Orissa, too, originally formed part of Bengal, though they have been separated from the older organisation since 1911.

The first separate existence as a Province came to Bengal in 1853; and the first-attempt at its dismember-

ment was made by Lord Curzon in 1905<sup>1</sup>, when he separated some of the eastern districts of the Province and joined them to Assam, calling the new unit the Province of Eastern Bengal and Assam. This Scheme was modified by the annulment of the Partition; the creation of Assam into a separate Chief Commissionership; and the separation of Bihar and Orissa into a Province by themselves in 1911. Agra had, indeed, been separated long before, in 1834, when the British districts in the Gangetic valley above Benares were formed into the North-Western Province of Agra. The territories of the Mahratta Prince in Central India, declared lapsed in 1853, were at first attached to Bengal, but were in 1861 made into a separate Chief Commissionership; while an independent province of Burma was formed in 1889 out of the acquisitions or annexations of the Burmese districts since 1824.

The Province of Bengal, as it exists today, is the richest and most homogeneous of all Indian Provinces. Geographically, it is formed, in the main, of the deltas formed by the Ganges and the Brahmaputra together with the numerous tributaries of these mighty streams. Its homogeneity is the further reinforced by practically one speech spoken throughout the Province,—Bengali,—by 46.4 out of 50 million of its people, or over 92.5 per cent. The rich alluvial soil, drenched with copious rainfall from the Bay monsoon, and by the waters of innumerable rivers, yields good harvests of all kinds of grain and commercial crops. Thanks mainly to the enterprise of non-Bengalis,—Europeans as well as Indians,—many new industries have also been developed, of which Jute has the

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1. Assam was made a Chief Commissionership in 1874, but we cannot rightly call it an instance of dismemberment for Bengal.

pride of place for more than one reason. Close to the rich timber and rice-land of Burma, and the tea-gardens of Assam, not to mention the coal and iron mines of Bihar or Orissa; and gifted with excellent harbours at Calcutta, Chittagong and Dacca, Bengal has developed an extensive foreign commerce.

The only rift in the lute, so far as Bengal is concerned, is to be found in the difference of religion in its population. Hindus account for 21.57 million, or 43.04 per cent, while Mussulmans number 27.5 million, or 54.87% of the population. There is a tendency among the Muhammadans all over India today to seek to mark themselves off as belonging to a different race and culture from that of the rest of their Indian fellow-citizens. In Bengal, however, the Mussulman is mostly the descendant of old Hindu converts, as is evidenced even now by the use of the Bengali speech by the Muslims along with the Hindus. The Mussulman, moreover, being poor, is dependent on his rich Hindu brother; and adopts the latter's ways and ideas to an extent that the consciousness of Communalism is not able altogether to shake off. The Hindu predominates still in the Landlord class, as also in the Professions and in Commerce and Industry,—though, in the last named, the share of the native Bengali is extremely limited. The Mussulman is tiller of the soil, living in rural parts, mostly in the Eastern districts, and altogether too backward to be aware of a different culture, even supposing he had a distinct culture of his own in Bengal. Crowded and extensive as the Province in its present boundaries is, it is, accordingly, impossible to suggest a further subdivision,—except, perhaps, for the city of Calcutta, which occupies in many respects a position similar to Bombay. Calcutta is, indeed, more dominant and

influential in the life of the Province than Bombay, chiefly because of the homogeneity of Bengal. Nevertheless, Calcutta, like Delhi, could be easily carved out into a Province by itself. But the rest of Bengal, at least in the plains, seems to be an integral unit, and will remain such, so long as our present ideas of political organisation and constitutional machinery last.

**United Provinces.** What we now-a-days call the United Provinces of Agra and Oudh were not always known by that name. For 30 years after Agra and the Mughal districts were won in the war of 1803-5, they remained part of the mammoth Province of Bengal. They were formed into a separate Province, called the North Western Province,—only in 1834, when the East India Company ceased to be a trading organisation in India. For another period of 43 years Agra remained by itself as a Province, even though Oudh was annexed in 1856 from its Mughal ruler. Since 1877 the two were united; and their designation was changed to the United Provinces of Agra and Oudh in 1901, when some of the districts separated from the Punjab adjoining the Indo-Afghan Frontier were made into a new Province called the North-Western Frontier Province.

Set in the heart of Hindustan, this Province is largely agricultural, only 10% of its population living in towns of such recent industrial importance as Cawnpore, or of such historic fame as Agra and Lucknow, Allahabad and Benares, Mathura and Hardwar. Geographically as well as racially, the Province is homogeneous, 84.50% of its population being Hindu, and only 14.84% Mussalman. Over 99% of the population speak Western Hindi. Though there is a tendency to distinguish between Agra

and Oudh, owing to some slight difference in traditions of culture, it is impossible to demarcate between the several districts, or groups of them, in this province, on any rational basis. The huge size of this unit, its dense population, and its immense economic resources, make it desirable, however, to administer it on some more modest arrangement than that of a single Governor's Province.

**The Punjab:** While the United Provinces are a land of Taluqdars, or large landholders,—260 Taluqdari estates in Oudh occupy two-thirds of the area of that province, and pay only one-sixth of the land revenue; while the Agra sub-province is a land of "Permanent Settlement" of Land Revenue with the Zamindars,—the Punjab, another agricultural Province, is a land of peasant proprietors. With an area about 7% less than that of the adjoining Province, it has a population less than half that of the United Provinces. It is a landlocked tract, watered by the five great tributaries of the Indus, which gives its modern name to the entire country. But for these mighty streams, with an annual wealth of the alluvial soil they bring; and but for the vast irrigation works constructed along their banks, this would be a desert province, unyielding to the toil of man any but the most meagre maintenance. To-day, however, it rivals in wealth and importance all the older Provinces. Of its 23 odd millions of population, 18.68 million speak Punjabi or some form of it; while 3.43 million speak Western Hindi. From the linguistic or economic standpoint, the province appears to be a homogeneous block, and admits of a uniform treatment in administration, which is, however, considerably modified by the sharp lines of Communal cleavage in this part of the country.

In the Punjab, the Muslims number 13.33 million, or 56.55 % of the total population ; Hindus, 6.33 million, or 26.84 % ; Sikhs, 3.04 million, or 12.98 %. The bulk of the Mussulman population is in the Western districts. The Muslims of this province cannot all be classed as converts from Hinduism, at least in the recent past. They are a sturdy race, with a tradition and a history of their own, of which in recent times they have become increasingly conscious. Opposed to them stand the Sikhs, who held the Province less than a hundred years ago, against both the Muslim and the English. They are a small Minority in numbers, but in wealth and industry, in martial tradition and love of independence, by no means a negligible quantity. Distinct in religion, they have and nurse bitter memories of cruel persecution at the hands of the Mughal Emperors, which make them still irreconcilable to their Muslim fellow-citizens. Sikh aid in the critical hour of 1857 having been materially useful in retaining the hold of the British upon the country ; and Sikh enlistments in the Indian Army since that time having always maintained a high level, British sympathy towards this sturdy race of intrepid warriors has begun to decline only in very recent years. Like all Minorities conscious of their historic individuality, and yet afraid of their future in an age when the mere weight of numbers may tell, the Sikhs in the Punjab have adopted a policy, the distinguishable, in its essential particulars, from that of the more communally minded Hindus or Muslims.

The Hindu Minority of the Punjab is, essentially speaking, indistinguishable from the Sikhs, except perhaps for the economic characteristics. While the Sikh is mainly a cultivator, the Hindu is a shop-keeper, merchant, banker, or industrialist. If he has interest in land,



it is, generally speaking, that of a mortgagee rather than that of a farmer. While the Sikh occupies the centre of the Province,— with Lahore and Amritsar as his greatest headquarters, the Hindu is found in large proportions in the Eastern Districts. In the latest political groupings or affinities, the tendency has been more and more noticeable of a close alliance between the Minority Communities, though efforts have not been altogether unknown or fruitless towards creating a sort of a Centre Party, or the Unionists, of all the three Communities.

**Bihar and Orissa :** As a distinct Provincial entity Bihar is not even a generation old, while Orissa comes into separate existence only from 1936. Bihar is a Hindu Province, 82.31 % of its population being Hindu, and only 11.32 % Mussulman.<sup>1</sup> While Bihar is almost wholly agricultural, Orissa has large mineral and industrial enterprises. Racially, too, these two units are distinct, as is shown by the different languages in common use in these two units; and so it is but fit and proper that Orissa should have a separate recognition and a distinct existence. But it is a poor Province, with a heavy leeway to make up in nation-building departments. Its resources are believed to be very considerable ; and so the future is by no means too gloomy.

**The Central Provinces :** The Central Provinces were formed, in 1861, out of the lapsed dominions of the Rajah of Nagpur. In 1903 the Nizami Province of Berar was transferred by the Nizam in perpetual lease to the

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1. These figures relate to the combined province of Bihar and Orissa. The latter has only 3 % Muhammadan population. In Bihar 96 % speak Hindi or Hindustani, while in Orissa over 80 % speak Oriya.

British Government; and the latter appended it to the then existing Chief Commissionership of the Central Provinces. Together these were raised, in 1920, to the status of a Governor's Province; and in the Government of India Act, 1935, Section 46, the same status is continued. Berar remains, for administrative purposes, a part of the Central Provinces, and in official language is coupled with it. But, as a refinement of political casuistry, Section 47 of the Act of 1935 provides that the sovereignty in Berar is that of the Nizam, who is supposed to have, by agreement with the King-Emperor, transferred the administration and governance of the Province to the British Government, which, by the Act of 1935, Section 46, makes it part of the Governor's Province called the Central Provinces and Berar.

This is a landlocked Province, surrounded on almost all sides with Indian States. It has, linguistically speaking, the peoples of all its neighbour Provinces, Bombay, Madras, Bengal, Orissa, and the United Provinces. Of its 15½ million people,

5,432,265	speak	Marathi;
4,825,293	„	Western Hindi
3,239,030	„	Eastern „
950,587	„	Gondi
336,648	„	Rajasthani
263,133	„	Oriya
152,838	„	Korku
130,393	„	Telugu

The two main languages, however, of the Province, are: Marathi and Hindi, which account for more than 90% of the population. There is a sprinkling of other languages; but they are to be found in much greater numbers in the adjoining provinces or States; and so, if a linguist



redistribution of Provinces were to take place, the Central Provinces afford one of those examples, in which the present entity will hardly have a trace left.<sup>1</sup>

1. That the linguistic distribution of the peoples of India does not follow the provincial grouping may be seen from the following table;—

Language	Number of people speaking	Spoken in States and provinces.
Hindi : Western	71,547,071	U. P. ; Central India ; Punjab ; Hyderabad Bombay ; Madras ; Rajputana ; Gwalior ; Mysore C. P. & Berar ; Bengal ; Baroda ; Ajemere-Merwara ; Delhi ; N. W. F. Province Baluchistan ;
„ Eastern	7,867,103	Western India States
Bengali	53,468,469	Bengal, Assam, Bihar Orissa ; U. P.
Telugu (Andhra)	26,373,727	Madras, Hyderabad, Mysore. C. P. Bamba, Bihar, & Orissa,
Bihari	27,926,559	Bihar & Orissa
Marathi	20,889,658	Bombay ; C. P. ; Hyderabad ; Madras ; Mysore ; C. India.
Tamil	20,411,652	Madras ; Mysore ; Hyderabad ; Bombay &c.
Punjabi	15,839,254	Punjab ; Delhi ; N. W. F. Province ; Kashmir ; Bamba, Rajputana ; Baluchistan ; U. P. ;
„ W.	8,566,051	Punjab ; Kashmir ; N. W. F. Province ; Baluchistan
Rajasthani	13,897,896	Rajputana ; C. I. ; Punjab ; Gwalior ; Ajmer - Merwar ; Hyderabad ; Kashmir ; Bombay ; C. P. ; Mysore &c.
Kanarese	11,206,380	Mysore ; Bombay. Hyderabad ; Madras ; Coorg &c.
Oriya	11,194,265	Orissa ; Madras ; C. P. ; Bengal ; Assam, &c.
Gujerati	10,849,984	Bombay, W. I. States Agency ; Baroda ; Rajputana ; C. I. ; Madras ; C. P. ; Hyderabad , Gwalior &c.
Malayalam	9,137,615	Madras, Coorg &c.
Kherwari	4,031,970	Bihar & Orissa, Bengal &c.

(Continued on page 22)

The two main blocks of the Hindi-speaking and Marathi speaking districts make each a fairly contiguous whole. The province of Berar and the districts in the Nagpur division on the West are Marathi-speaking; while the remaining 14 districts, in the east and the north of the Province, are mainly Hindi-speaking. Economically, too, there seems a division, Marathi districts being gifted with the rich black cotton soil and the textile industry founded on its produce; and the Hindi districts being wheat growers and of forest produce. 86 % of the population is Hindu, and another 8.72 % of tribal religions, leaving less than 5 % to follow the Muslim faith.

**Assam :** The smallest and the least developed of the Governors' Provinces is Assam. First separated from Bengal in 1874, it was made into a Governor's Province in 1920. It is still a Province without a University of its own, and without a High Court. Its population is centred in the

*(Continued from page 21)*

Language	Number of people speaking	Spoken in States and province.
Sindhi	4,006,147	Sind; W. I. States; Baluchistan; Rajputana; Punjab.
Pahari W.	2,325,916	Punjab; Kashmir &c.
Bhili	2,189,531	Bombay; Baroda; C. I.; Rajputana; Gwalior; &c.
Assamese	1,999,057	Assam
Gondi	1,846,878	C. P.; C. I.; Hyderabad; Madras, Assam; &c.
Pashto	1,636,490	N. W. F. Province; Baluchistan; Punjab; &c.
Kashmiri	1,438,021	Kashmir.
Kurukh or Oraon	1,037,142	Bihar & Orissa; Bengal; C. P.; (States) Assam.

These account for about 300 million people, leaving out Burma. A good proportion of these may be familiar with one or the other neighbouring or kindred language. There are thus, really speaking, not more than 9 or 10 principal languages in India, and of these Hindi, in some form, may be said to be familiar to at least 40 % of the population, if not more.

two valleys of the Brahmaputra and the Surma, and consists of more than half the number Bengalis, while only about 20 % are pure Assamese by birth. The Province is mainly hilly, rich in forest produce, tea-gardens, and allied products. Its possibilities for more intensive economic development are hindered largely because of its inaccessibility. About 57.20 % are Hindus; 31.96 % Mussulmans; and 8.25 % Tribal religions.

**Sind & Orissa:** We have already spoken of the two recent creations of Governors' Provinces:—Sind, and Orissa,—while speaking of the original Provinces from which they have been separated.

**Sind:** In Sind, the desire for separation from Bombay originated in a consciousness, however vague, of cultural differences. It was enforced by the obviously distinct geographic configuration and economic characteristics of the country, and intensified by the desire of the Mussulman majority in the Province to have one more Province under Muslim rule in the era of Responsible Government and Provincial Autonomy. The Hindu Minority opposed from the beginning the demand for separation, not only because they realised the disproportionately greater strength and influence they wielded because of the union with the predominantly Hindu Province of the Bombay Presidency, which would be lost on separation from Bombay; but also because of their recognition that the economically weaker position of the independent Province of Sind would necessarily expose them to relatively higher burdens of taxation,—the Hindus being the richer and more enterprising community.

In his life and culture, the Sindhi resembles more the Mussulman neighbour on the West of India

than the Hindu fellow-citizens across the desert, or beyond the sea. The Hindu in the rest of India felt with the Sindhi Hindu an anxiety as to the trend of future events as reflected in the separation of Sind from Bombay, and the creation of a solid block of Muslim provinces all along the Northern and Western boundaries of the country. The Indian Mussulman in general may not have any real desire to secede from the rest of India. The days of Pan Islamism seem to be receding in the distance, if one is to judge from the markedly rationalist life and secularist policy of the Muslim countries of Western Asia or Africa. The Khilafat has been abolished from the land of the Khalifas; and religion, at least of the more aggressive and fanatical sort, appears to be at a discount in Persia and Turkey, Egypt and even Iraq. *Real politik* must, therefore, inevitably teach the Indian Mussulman the futility of secession, either on separate existence as a block of their own, or in any hope of closer union with other Muslim countries of Western Asia. But even if the constitution of Sind into a separate Province is not to be regarded as a forerunner of a centrifugal movement, it is not equally certain that the Muslim authors of the idea of Sind-separation were utterly innocent of the possibility of holding the Hindus of Sind as a sort of hostages for the good behaviour of their co-religionists in those other provinces of India where the Mussulmans were in a minority.<sup>1</sup>

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1. Says the Indian Statutory Commission (Report Vol. I. p. 59):—"This demand (for the separation of Sind) has gathered strength not so much in the homes of the people, or among the Muhammadan cultivators of Sind, as among leaders of Muhammadan thought all over India, to whom the idea of a new Moslem province, contiguous to the predominantly Moslem areas of Baluchistan, the North-West Frontier Province, and the Punjab, naturally appeals as offering a strong-hold against the fear of Hindu domination."

In a democratic age, it would be impossible, in fairness, to deny the right of every distinct unit to develop its own resources and individuality as it seems best to the leaders of that unit. In theory, therefore, there can be no objection to the separation of Sind, or any other districts from another existing Province, if the people of the area demanding separation have a distinct individuality, and are possessed of resources to develop that individuality. In the case of Sind, the opinion was generally held that, on its own, the Province will be too poor to support the burden of a modern civilised administration. True, there were projects afoot, such as the Sukkur Barrage, which, when in full working order, were estimated to make up for much of the deficit calculated to result in the administration of a separate Sind. But the geographic peculiarities of the soil, and the action of the river water on the country around, seem to have been not fully considered at the time the project was taken in hand. Subsequent developments give reason to believe that the calculations of profit from the land sales, or water rates, or increased Land Revenue in the canal areas were made more enthusiastically than accurately. The effects of agricultural Depression all over the world have something to say in mitigation of the error in calculation. But even making all allowance for such factors, the fact remains that Sind will continue to be a deficit Province, needing substantial subvention from the common purse, for the better part of a generation after its separation.

The one remedy to counteract this threatened deficit—to curtail drastically the over head charges of administration,—including the excessive salaries and emoluments of the public servants in all ranks,—is impossible to attempt.

so long as the supreme British Government remains as the Trustee and guardian of such vested interests. The deficit in Sind, as in all other Provinces similarly situated, is measured on the present standards of administrative costs and equipment prescribed by an alien bureaucracy; and not in terms of that real backwardness which shows itself in the low percentage of literacy, the high percentage of mortality, or the wasted natural resources. The economic resources of Sind, and, *a fortiori*, her cultural possibilities, will not be realised merely because of separation from Bombay; and it is not improbable that the backward nature of the majority of the Sind people may operate actually as a drag upon any improvement over existing conditions,—by no means ideal,—of life in Sind.

**Orissa:** The same logic applies to the separation of Orissa, though, perhaps, the future in that unit may not be quite so gloomy. In a manner of speaking, Orissa is less developed than Sind at the starting point of a separate existence. Thanks mainly to the enterprise of the Hindu merchants of Sind, that Province has already a degree of advanced economic life, which in Orissa is lacking,—at least so far as the children of the soil are concerned. But Orissa is gifted with Mineral resources, and has industrial possibilities, which are manifestly lacking in the Western province. Besides, Orissa is not quite so badly divided internally as Sind seems to be, thanks to the cleavage of the Hindus and the Muslims. It is possible, therefore, to hope, that though Orissa starts, like Sind, as a deficit Province, it will be able, given reasonably favourable conditions, to wipe off its deficit, and make up its leeway in the equipment of a progressive province in

a far shorter space of time than Sind might be able to achieve.

**N. W. F. Province:** The North-West Frontier Province was made into a separate unit by Lord Curzon in 1901. Districts from the Punjab and certain Tribal areas were joined together into a separate Frontier Provinces mainly because the administrative principle and legislative enactments of the more settled Province of the Punjab would not be suitable in these more backward districts. Upto 1932, the N. W. F. Province was a Chief Commissionership, where the reformed constitution under the Montford regime was introduced only a few years ago. The Act of 1935 accepts it as a Governor's Province. It is a solid block of almost wholly Muslim population, its mountain regions, intersecte rid valleys, making any hope of further economic development illusory.

We need not notice more particularly the smaller units called Chief Commissionerships. They have, except perhaps in Coorg—no inherent principle of internal solidarity or regional homogeneity, which could foster a consciousness of separate individuality. They are and remain mere administrative divisions which present no features of interest to a student of political organisation, nor even an adept in social psychology. They may attain some interest in the future only when we are able to make a radical redistribution of the component units of India.

### **Character of Existing Provinces**

The Provinces so constituted, from time to time, necessarily lacked cultural unity, geographic solidarity, or historic continuity. Every one of them owes, as it exists



today, its position to considerations of political necessity or administrative expediency. If any of them still show, notwithstanding this history, local unity or homogeneity, that is rather fortuitous than the result of deliberate intention. That this charge is not a mere matter of Nationalist prejudice is evidenced by the devices, increasingly employed of late, to cut new furrows and make new cross-sections of the unit which showed, as Bengal, or could show, an inconvenient degree of local patriotism overriding the sentiment of Impartialist solidarity.

We shall review some of these devices hereafter. Let it be added here, however, that the sole *raison d'être* of any provincial sentiment in this country is to be found in the chance it affords for the local culture and local resources to be properly exploited by indigenous skill and energy. If given a separate statehood, these might afford an opportunity for that fullness and richness of life, which, in the larger mass, may never fall to the share of the less aggressive components. Under the conditions in which the provincial units have been set up in this country, this one justification loses much of its force; since the supreme British authority would, for its own reasons, encourage Provincial sentiment or centrifugal tendency up to a point, but up to a point only, and no further. There is, of course, no question of maintaining the integrity of India as she has been for the last hundred years or so. But in so far as the fullest possible growth of any Province should prove incompatible with the maintenance of the British Raj, or the carrying out of the British policy, the local sentiment would be scorched and withered and denied expression, no matter how laudable it may be in intention, and fruitful in result.



The Nationalist Indian may have his own opinion on this question. The sentiment of Indian nationality may be, historically speaking, of relatively recent growth,—at least in its present form. But the phenomenon of an Indian Empire,—the ideal of Indian unity—is no strange occurrence, or foreign importation. In its present form, the growing strength of the Nationalist sentiment, in all classes of the Indian people, is undoubtedly due to the perception of the economic and social possibilities for a united and self-governing country, on a scale like India's. Against this sentiment of Indian nationality runs the still unextinct sentiment of local, or parochial feeling, which, with particular communities, like the Marathas in Bombay or the Sikhs in the Punjab, is associated with historic memories too deep to be obliterated even after a century of national unification.

Crosswise to this line of division, runs another fissure,—also historic in its origin,—but mainly of recent stimulus, known as the Communal cleavage. From 1858 when the administration of India came directly under the British Crown till 1909, the British Government maintained a policy of impartiality as between the Hindus and the Mussulmans, and so encouraged, albeit unconsciously, a sentiment of national solidarity, which had all but succeeded in obliterating the Communal line. The evolution of political consciousness in the Indian people, as manifested by the organisation of a National Congress, in which all communities joined at first to voice the common national grievances and express the national ambitions or aspirations, alarmed the Rulers. The more sagacious among them sought refuge in the ages-old maxim of Imperialism all over the world: Divide and Rule. The only possible and conveniently handy line of division

was to be found in the historic antagonism between the Hindus and the Muslims. Because the mass of either community was woefully uneducated, and so unable to perceive their own true interests owing to the fog of religious superstition amidst which they lived, the encouragement to one community,—preferably the Minority community, which, being weaker because of its backwardness, was bound to be more suspicious of the majority, and sympathetic or responsive to the British overtures,—easily set aflame the smouldering embers of historic dissensions.

The first demand for separate Communal representation was urged, officially, in 1906, when a Muslim deputation waited on the then Viceroy, and submitted to him that in a system of Joint Electorates, the Minority Community could not secure representation in adequate proportion to the numbers of the community, its political or military services, or even by representatives really acceptable to the community. They accordingly demanded separate representation, through separate Communal Electorates, on all local self-governing bodies, as also in the Provincial Legislatures to be instituted under the so-called Morley-Minto scheme of Reforms. The principle of separate representation for the Muhammadans, through their Communal Electorates, was accepted by the Government of India, and given effect to for the first time, in the Act of 1909.

Meanwhile, the communal consciousness of the Muslims grew apace, though they do not seem to have overlooked altogether the somewhat conflicting demands of the Indian national solidarity. By the so-called Lucknow Pact between the chief Political organisation of the Muslims and the Indian National Congress, arrangements were made to extend further the principle of

separate Communal representation giving substantial weightage to the Mussulmans in the Provincial legislatures of the post war era where the Muslim community was in a minority<sup>1</sup>. In the Provinces where they were in majority, it was thought unnecessary to provide for a statutory majority being assured to them. But, instead, a clause of the Pact provided that :

“No bill, nor any clause thereof, nor a resolution introduced by a non-official, affecting one or the other community ( which question is to be determined by the members of that community in the Legislative Council concerned ) shall be proceeded with, if three-fourths of the members of that community in the particular Council, Imperial or Provincial, oppose the Bill or any clause thereof, or the resolution.”

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1. The arrangements made under the Lucknow Pact, and as given effect to in the scheme of Reforms known as the Montford Scheme, are shown in the following Table, taken from the Indian Statutory Commission's Report (Vol. I., p. 189)

Table showing the position of Muslim Members in the Provincial Legislatures in 1926, and compared to that provided in the Lucknow Pact.

Province	% of Muslims to total Population	% of Muslim Voters to Total in General Constituencies	% of Muslim Members to Total	Present % of Muslim elected Members to total elected Indian Members.	Present % of Muslim Members to Total in seats elected from Indian General (communal) constituencies	Lucknow Pact Percentage.
Punjab	55.2	43.7	40	48.5	50	50
U. P.	14.3	14.1	25	30	32.5	30
Bengal	54.6	45.1	30	40.5	46	40
Bihar & Orissa	10.9	10.9	18.5	25	27	25
Central Prov.	4.4	8.4	9.5	13	14.5	15
Madras	6.7	4.7	10.5	14	16.5	15
Bombay	19.8	17.7	25.5	35	37	33.3
Assam	32.3	30.1	30	35.5	37.5	...
Legislative Assembly	24.0	16.5	26	34	38	33.3

All nationalist opinion is agreed, however, that separate Communal Electorates are the most effective barrier against the sentiment of national solidarity. They tend to stereotype an obsolete and unprofitable line of demarcation, intensifying internal antagonism, and obstructing the growth of real self-government. Communal lines are, moreover, seldom identical with real economic class distinctions. They are stressed by those elements in the Indian communities themselves, which, unable to secure their own prominence by the open door of general competition in Joint Electorates, insist upon separate constituencies which afford them better chances of success. They may have been serviceable in rousing consciousness of the economic and political backwardness of given communities. The political power derived by representatives of such communities, chosen in separate Communal Electorates, may have been used, in competent hands, to make up in recent years the leeway of advancement which the Muhammadans had been undoubtedly lacking in. But once they are admitted into the body politic, they have a nasty tendency to persist, and perpetuate the unnatural division they imply. Even if one admits this service of the Communal constituency to particular sections of a given community, they must be pronounced to have been purchased at too heavy a cost to the sentiment of National solidarity, and the possibilities of all-round progress; to be a needless and harmful smoke-screen against the emergence of realistic lines of economic issues, and the consequent stimulation of the efforts at real social reconstruction.

In so far as a Minority community, like the Mussulmans, is not confined to one Province, but is scattered

all through this vast country, the existence of separate Communal Electorates prevents the growth even of that degree of provincial sentiment, which may be depended upon to hasten the development of the local resources and the advancement of the local people. Their continued existence creates a sort of vested interests for communalist adventurers, which must for ever render precarious peace and harmony within the country and genuine co-operation among its peoples.

The example of the Muslims in obtaining separate Communal Electorates for themselves has encouraged other communities of India,—not distinguished from the bulk of the Population even as much as the Muslims are from the Hindus, nor having the same argument of numbers,—to demand separate representation for themselves. Indian Christians and Anglo-Indians form microscopic minorities, while Europeans in India have not even the excuse of a permanent interest in the country to justify such special recognition. The Depressed Classes in the Hindu fold; the backward but numerous Non-Brahmins of Madras or Maharashtra; the Scheduled Castes and Hill Tribes,—all demand separate constituencies for themselves, on essentially the same logic as that inspiring the Muslim demand.

And, like the Muslims', the demand does not remain confined to the legislative constituencies only. There is a growing tendency to demand a stated minimum proportion for each such minority in all branches of public services open to Indians. The Government of India have, since 1935, recognised the principle by a Resolution, which secures a guaranteed minimum of appointments to the different communities in the public services of the

country,—at what cost to the efficiency and integrity of public administration in this country the future alone can show.

The Communal line of cleavage is, however, not the most important line dividing the Indian peoples, even though it may for the moment, seem the loudest. The peoples of both the important communities are so inter-mixed and scattered all over the country, and their economic relations cross and recross one another at such innumerable points, that the present emphasis on this line of demarcation cannot be taken to be lasting. So far as the centrifugal forces are concerned,—so far, that is, as the opposition between national solidarity and provincial patriotism goes,—the more dangerous factor is the growing local sentiment of such homogeneous units as Bengal, where the Hindu and the Muslim are both prepared to merge the much advertised communal differences in the common cry of Bengal for Bengalis only.

Next to the Communal principle of division, the alien rulers of India have found in economic differences between classes and interests another potent factor to keep the people of India apart from one another. There are, in the new constitution, Special Electorates for Landholders and industrial Labour; for Commerce and Industry; for Universities and Women,—not to mention the still further sub-division as between Indian Commerce and Industry and European commerce and Industry in India. All these necessarily result in obstructing the none-too-smooth growth of national solidarity, and so precluding the possibility of an effective opposition to British Imperialism and exploitation of the Indian people. The existing state of Indian industry,—particularly the mechanised and large-scale specimens,—and of the



local or overseas commerce in the hands of Indians,—does not really justify the separate class Electorates in addition to the Communal Electorates created in 1919. The racial constituencies, again, such as those for Europeans, for Anglo-Indians, and for Indian Christians,—all followers of the same religion,—provide another breeding ground for mischief, for which those who insist upon such special electorates can offer not even the ghost of a reason.



The position of the Indian Legislatures, under the constitution in operation since 1919, may be illustrated by the following Table.

Table showing composition of Provincial Legislatures (in 1956)

Province.	Nominated Members (1).	Nominated special classes or interests (2).	General.	Muslim.	Sikhs.	Anglo-Indians.	Indian Christians.	Europeans	Landholders	Commerce & Industry	Universities	Total.
Madras	23	11	65	13	..	1	5	1	6	6	1	132
Bombay	20	8	46	27	..	..	..	2	3	7	1	114
Bengal	22	4	46	39	..	2	..	5	5	15	2	140
U. P.	20	3	60	29	..	..	..	1	6	3	1	123
Punjab	18	5	20	32	12	..	..	..	4	2	1	94
Bihar & O.	19	9	48	18	..	..	..	1	5	3	1	103
C. P.	11	7	41	7	..	..	..	..	3	3	1	73
Assam	12	2	21	12	..	..	..	..	..	6	..	53

1.—Col. 1 includes Executive Councillors and other nominated Members excluding those nominated to represent special interests or classes.

2.—Members nominated to represent special classes and interests include those for Depressed Classes, Anglo-Indians, Indian Christians, Industrial Labour, and Miscellaneous.

Given this composition of the Provincial Legislatures, it was impossible for the consciousness of political power and a sense of governmental responsibility to develop. The fault lay, indeed, not wholly with the nature of the electorates, and the composition of the Legislatures formed out of such electorates. The fault was much more largely of the very basis of the Constitution prescribed by the Act of 1919. After elaborating with a flourish the goal of progressive responsibility in the governance of India, the authors of the Montford scheme contented themselves with half-hearted responsibility in the Provinces. The system of Dyarchy, in which a certain number of the most important departments of Government were excluded from the scope of Ministerial responsibility, brought in the charge of the Indian Ministers only such departments as had very little effective power. And if any Department provided some scope for nation-building activities, the financial conditions in almost every Province were such that no real improvement could be effected. The Executive, or non-responsible branch of the Government, held a first mortgage on the provincial purse; and their Departments absorbed more than half the Provincial revenues. The Governor, moreover, had extraordinary powers of certification of the Budget or of any tax, should the Legislature in a homogeneous province refuse to be docile. When these extraordinary powers did not suffice, they could suspend the whole Constitution, as they did more than once in Bengal, or the Central Provinces, between 1921-30.

The Governor-General, again, had still more overriding powers. His leave was necessary prior to the introduction of any legislative measure of importance in a

Provincial Council; and his assent indispensable for making any enactment of a Provincial legislature a valid law. He had powers of passing Ordinances overriding the law of the land. For close upon 4 years (1930-1934) India was practically governed by Ordinances. From 1921, when the Montford Constitution came into operation, to 1927, the Provincial Governments had to make financial Contributions in aid of the Central Finances; and though these were discontinued from and after that date, the sources of revenue left to the Provinces, and the restrictions imposed by the Devolution Rules, were such that no Province could really start truly developmental projects. The central, and final, authority rested unquestionably with the Government of India, who were in no department responsible to the Indian Legislature; but who were responsible to the Secretary of State for India, - a British Cabinet Minister.

The devices, again, in the Provincial as well as the Central Legislature, of a nominated element; and of an Upper Chamber in the Central Government, which contained an official majority, and could be made more submissive than the Legislative Assembly, made the expression of Indian opinion on given questions but of little real effect. The bulk of the Central Budget was utterly non-votable; and that portion, which was theoretically subject to the Vote of the Legislative Assembly, could, in the event of an adverse Vote in that body, be always adjusted to the liking of the Governor-General by the device of Certification. There was, likewise, the provision in the Act of 1919, of the two Chambers of the Central Legislature sitting together in the event of a difference of opinion in regard to any first class piece of legislation; but Government seldom utilised

this power, as they found Certification more easy and effective.

It is needless to dilate further upon the elements of disunion and lack of solidarity in the Constitution of 1919. Provincial rivalries; communal jealousies; class antagonism; race prejudices; and the conflict between the Central authority *versus* the Provincial ambitions,—all these combined made it impossible to foster any measure of progressive, or responsible, government.

## CHAPTER II

### GENERAL VIEW OF PROVINCIAL GOVERNMENT UNDER THE NEW CONSTITUTION.

**Evolution of the Idea of Provincial Autonomy :** It is in the ground, described in the preceding Chapter that the seed of Provincial Autonomy was sown. The Indian political leaders seem, at the commencement of the present Century, to have realised that it was impossible to expect the British Government to part with any effective power in the government of India, so far as the central authority was concerned. If the Indian people at all desired to be associated in the task of their own government, the only field open to them was in the local self-governing institutions, or at most in the provincial administration, under definite conditions and restrictions. They, therefore, raised the cry of "Decentralisation", and asked for a larger and larger measure of association of elected Indians in these bodies right upto the Provincial Government.

Upto the time of Lord Morley, British statesmen could not conceive of the possibility of Parliamentary democracy in this country. After reviewing the changes he had proposed in the so-called Morley-Minto Reforms, Lord Morley declared, from his place in the House of Lords :

"If it could be said that this chapter of reforms led directly or indirectly to the establishment of a Parliamentary system in India, I, for one, would have nothing at all to do with it".<sup>1</sup>

And though, within less than 6 years after this declaration, the outbreak of the World War compelled

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1. House of Lords Debates, Dec. 17, 1908.

British statesmen to reconsider their position,—at least so far as verbal professions went,—the outlook in essence has remained undisturbed.

### **Self—Government as conceived by Indian Leaders**

The Indian leaders had, meanwhile, widened unconsciously their own outlook, and had learnt to think and speak of effective control of the entire governmental machine in their country. They were yet far from perceiving the true character of British Imperialism and Capitalistic exploitation in India. If the more sagacious among them had a glimpse of the real state of things, they were themselves much too closely linked, by the invisible ties of personal interest, and the mystic sympathy of identity of economic classes, with that system, really to desire a radical replacement of the entire system. The charge could, therefore, be made, with something more than merely a show of logic, that all they desired was the substitution of the brown for the white bureaucracy, Indian for the European exploiter. They had, indeed, no aim higher than the attainment of "Dominion Status" within the British Commonwealth of Nations, as the British Empire is euphemistically described by its admirers. The ideal of complete independence, and all that such an ideal would, if realised, connote, of responsibility, was openly disavowed, or silently dismissed as mere window-dressing, which would mislead no one. As for a radical reconstruction of Society through the use of political power, they were mostly innocent of the very conception of social justice, to be accomplished by such means. They, accordingly, still thought of constitutional reform in terms, and on a scale, which, under the Government of India Act, 1955, may be claimed,—from the British side at any rate,—to have been met.

### **Scope and purpose of the new Constitution**

In the pages that follow, a picture is attempted to be laid out of the real nature and the exact extent of Provincial Self-Government conceded by the new Constitution. The possibilities of achieving any thing constructive or substantial with this new instrument are also considered hereafter. But, at this stage, it is necessary to add, as a general observation regarding the outstanding characteristic of the new Constitution, that the reservations expressly made; the conditions and limitations specifically imposed, and the directions in which,—and which alone,—any governmental action can take place at all, make it impossible to hope for any substantial relief from Imperialist burdens or exploitive policies.

### **Ground plan of the Act of 1919**

The Act of 1919 was alleged to be founded on four principles, *viz.*:—

- (1) Complete popular control in local bodies, like the Municipalities, and freedom from outside control;
- (2) First steps towards a progressive realisation of Responsible Government in the Provinces, consistent with the ultimate responsibility to Parliament of the Government of India;
- (3) Supreme authority, in India, of the Government of India, subject to their responsibility to Parliament;
- (4) Gradual relaxation of the control of Parliament in proportion as the principle of local responsibility and provincial autonomy develops.

**Changes in the Act of 1935:** In all these respects, the Act of 1935 professes to effect a radical change.

**(1) Doctrine of British Parliamentary Sovereignty**

The doctrine of Parliamentary supremacy and British Trusteeship of India is not altogether abolished. In fact, the inclusion of the Indian States in a proposed Federation of all India extends the theoretical sphere of British Parliamentary supremacy to those parts of India, which were, until the advent of the Federation, not expressly and indubitably under that supremacy, or sovereignty. In another Monograph of this Series, an attempt is made to evaluate concretely the contribution of this device of including Indian States in a common Indian State or Commonwealth, to the progress of the ideal of Indian autonomy. But, allowing for this theoretical position, the admission of the principle of responsibility in the Federal Government of India,—however restricted the sphere of activity of that Government may be, and however rigidly conditioned its exercise,—is claimed to be a change in the scheme of the existing Constitution that, they claim, the Indian people must regard as a fulfilment of the pledge contained in the Montford Report and the preamble to the Act of 1919.<sup>1</sup>

**(2) Relaxation of central control**

The relaxation, again, of the control or domination of the Government of India over the Provincial Governments, and the recognition of the principle of Responsible Ministries chosen from the Parties commanding a majority in the provincial legislatures, is claimed to be another indication of the same trend of policy, which the advocate of the British regime

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1. "Whereas it is the declared policy of Parliament to provide for the increased association of Indians in every branch of Indian administration; and for the gradual development of self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the Empire".



in India points to as the earnest of good faith and constructive statesmanship. The Responsibility of Provincial Ministries, in so far as they could be compact bodies with collective responsibility at all, is, as will be shown more fully hereafter, so circumscribed; the rules or conventions regarding the choice by the Governor of his Ministers so rigid; and the scope of action open to Provincial Governments is so narrow, that there can be no real autonomy in the Provinces; much less a real independence of the Indian Government.

(3) The control of the latter in minor details here and there might be relaxed; but, in essence, the powers of the Governor-General, as head of the Federal executive, would, if anything, be more extensive and affective than under the Act of 1919, especially if the offices, of the Representative of the Crown,—the Viceroy proper,—and of the Governor-General are combined in one and the same individual.<sup>1</sup>

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1. Cp. Section 3, Government of India Act, 1935:

3. (1) The Governor-General of India is appointed by His Majesty by a Commission under the Royal Sign Manual and has—

(a) all such powers and duties as are conferred or imposed on him by or under this Act; and

(b) such other powers of His Majesty, not being powers connected with the exercise of the functions of the Crown in its relations with Indian States, as His Majesty may be pleased to assign to him.

2. His Majesty's Representative for the exercise of the functions of the Crown in its relation with Indian States is appointed by His Majesty in like manner and has such powers and duties in connection with the exercise of those functions, not being powers or duties conferred or imposed by or under this Act on the Governor-General, as His Majesty may be pleased to assign to him.

3 It shall be lawful for His Majesty to appoint one person to fill both the said offices.

(4) The relaxation of Parliamentary Control is the logical consequence of the growth of self-Government in India; but, as will be shown more fully later, the Act of 1935 does not by any means correspond, so far as India is concerned, to the statute of Westminster as applying to the Dominions. Parliamentary control is both real and extensive; and the Indian politician who ignores the numerous sections in the Act of 1935 which refer to this control, either in their intent or their effect, would only be proving himself ignorant of the very elements of Imperialist politics.

### **Peculiarities of Federation in India**

It is unnecessary to go into the details, at this point, of the powers and functions of government distributed between the Provinces and the Central authority, under the Act of 1935 to lend point to the observations just made. But it is necessary to point out, even here, that the Federation in India will differ from all other federations in the world in two important respects:—

(1) The component units are, as between themselves, not of equal wealth or status. While the Indian States who join the Federation claim a degree of local sovereignty and independent existence, which the British Provinces, being creatures of the supreme authority, can never be allowed to claim; the Provinces, in their turn, command a degree of economic development and general progress, which the Indian States confessedly lack, and may even be averse to. The motive forces in demanding, or working together in, a common system of government will also not be the same for these two classes of the Federal constituents, as also their respective ideals and ultimate objectives.

(2) The other point of difference consists in the distribution of powers and functions between the Federation and its constituent units. While the Provinces are given, by the Act of Parliament, definite functions exclusively of, and certain others concurrently with, the Central Government,—with an almost unquestioned superiority of the Central Government in the event of a conflict,—the States make over, or *delegate*, to the Federal authorities only such functions and powers,—and under such reservations and conditions,—as the Instrument of Accession of each State joining the Federation may prescribe. (Section 6). The Provinces are part of the Federation by Act of Parliament; the States become part of the Federation by an Instrument of Accession, signed by the Ruler of each State, under such terms, conditions, or reservations, as are made in the Instrument and accepted by the Governor-General.<sup>1</sup> The list of Federal subjects (Schedule VII to Section 100) includes 59 subjects, of which only 47 are of direct relation to the States. It is possible the Instruments of Accession would exhibit,—when the required minimum of these documents are executed,—a degree of similarity without which it would be impossible to run a machinery of the kind provided in the Government of India Act, 1935. Nevertheless, the whole *raison d'être* of Federal authority in the States is essentially different from that in the Provinces; and, consequently, the working of these two parts in the central authority is bound to be radically different.

### Sovereign Authority Outside India

Formed on these different,—and somewhat contradic-

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<sup>1</sup> cp. Particularly Sections 2 and 6 of the Act of 1935, as also Ss. 122—129 *idem*.

tory,—bases, the Indian Federation has two other points of weakness inherent in its very Constitution, which cannot speak too well for the future of the country collectively. (a) The supreme authority,—the complete sovereignty,—does not remain in India: It is vested in an outside authority,—the King-in-Parliament—of the United Kingdom. There are directions in which the Federation of India cannot act, even if all the constituent units were agreed as to such action, simply because they have not,—collectively or severally,—the power to act in such ways. There are matters on which the Federation cannot legislate,—simply because there is no authority, either in the Federation or the units, to do so. And the most important of such matters for action or legislation is in regard to the modification of its own constitution. Without a concurrence of the British King-in-Parliament, there can be no change in the Indian Constitution, however much the people of India in all parts of the country and of all classes may desire a change.

### **Supreme Power of the British Parliament**

But while the Indian people can effect no radical change in the Constitution, the British Parliament has supreme authority to make any change it desires. The beginning of the new regime by an act of dismemberment,—the separation of Burma from India,—may be justified by respect for the right to self-determination of the people of Burma. The actual terms of that constitution does not afford any proof that the separation of Burma is due solely to a recognition of the right of the Burmese people to self-realisation in their own way. But, even granting that this was an act in the legitimate direction, the example may well suggest a separatist bend in the fundamental policy, which needs must weaken the

authority of the Federation. Even the institution of Sind and Orissa as separate provinces may not unjustly be taken as illustrations of the tacit resolve of the British Government to allow no single unit so much strength as to make it a source of danger to the central authority. The coincidence of the Mussulman sentiment for separation, in Sind as well as outside, was a fortuitous help to the British intentions which would in no way be jeopardised, at least for half a century at the present rate of progress, simply because, both in Sind and in Orissa, the local people are much too backward to be really a match for British diplomacy.

The creation, moreover, of a Mussulman block all along the North West of India, adjoining the traditional Muslims countries of Western Asia is,--not a contribution to the realisation of the Pan-Islamic dreams. It is simply a sort of Damocles' sword held over the Nationalist India. If the latter desire the continued functioning of a united India, it must do so in loyal and subordinate co-operation with Imperialist Britain; or else, the centrifugal forces inherent in such Acts would be unleashed to the undoing of Indian unity. The Punjab, Sindh, and the North-West Frontier Province are sufficiently contiguous, homogeneous, and strategically situated, to make the threat of secession more than a mere nightmare of the overheated Nationalist imagination. So long, however, as it may suit the British Imperialist authority in India to maintain the unity and integrity of this country, the Federation will be supported and strengthened, despite all professions of regard for local autonomy. But the moment, the Indian Federation as a whole, or any component parts thereof, show signs of effective recalcitrancy against the British Imperial domination, the centrifugal tendencies will be

brought into play, just as effectively as the Communal sentiment is at the present times fanned or checked precisely as the Imperialist policy needs.

There are thus inherent, in the 1935 Constitution of India, seeds of a Civil War. All the passions which lead to such conflicts are germinating; only the effective power to wage war is reserved exclusively to the representative of British Imperialism in India, the Governor-General. Even the States, which are supposed to join the Federation by a voluntary act, are not at liberty to secede from it to suit their own convenience. Once they join it, they will have no option to leave the Federation, however much their local interests or personal prejudices of the Rulers may suffer. Section 6 (5) and Section 45 (4)<sup>1</sup> suggest that, any radical modification of the Act of 1935, or the suspension of the Constitution provided for by that Act for over three years, may justify the

1. Section 6(5) provides: "It shall be a term of every Instrument of Accession that the provisions of this Act mentioned in the Second Schedule thereto may, without affecting the accession of the State, be amended by or by authority of Parliament, but no such amendment shall, unless it is accepted by the Ruler in a supplementary Instrument, be construed as extending the functions which by virtue of the Instrument are exercisable by His Majesty or any Federal authority in relation to the State."

Section 45(4) provides:—

"If at any time the Government of the Federation has for a continuous period of three years been carried on under and by virtue of a Proclamation issued under this section, then, at the expiration of that period, the proclamation shall cease to have effect, and the Government of the Federation shall be carried on in accordance with the other provisions of this Act, subject to any amendment thereof which Parliament may deem it necessary to make, *but nothing in this section shall be construed as extending the power of Parliament to make amendments in this Act without affecting the accession of a State*". (Italics ours)

These may be read to mean that, in the event of radical amendment of the present Constitution, or its continued suspension for 3 years, the Federated States may be free to leave the Federation.

Federating States to withdraw from the Federation. But that is a condition for withdrawing, which does not operate at the instance or wish of the States individually. In fact, this oblique opportunity provided for the States to withdraw from the Federation, under two specific contingencies, is, in reality, an implicit threat to the more determined of the Indian Nationalists bent upon complete emancipation of this country from bondage to British Imperialism, that they would disintegrate the entire country if their "subversive" activities are pushed beyond a point suitable to the British notions of propriety in such matters.

### **Distribution of Powers and Functions**

(b) The division of powers and Functions, resources and obligations, between the Federation and its component units, is also made on the same basis of keeping in tact the ultimate dominion and sovereignty of Britain. When we come to discuss the resources open to the Provinces, we shall see more clearly how they are all crippled inevitably because of the need to maintain British Supremacy in tact. Even in the States, while theoretically only such resources and powers will be transferred to the Federal authority as the Ruler of each federating State considers necessary for the proper working of the federal structure, the exigencies of the situation would enforce a minimum of delegation of powers, or surrender of resources from the States, which cannot but restrict narrowly all opportunities for local development. There are provisions, of detail as well as of fundamental principle, which make it beyond the possibility of a doubt that the regard for developing the sentiment of Provincial Autonomy is only in so far as it is not incompatible with British supremacy, or in so far as it could be made an effective weapon against the undue expression of unyielding Indian Nationalism.



The ability of the units is thus extremely restricted in achieving anything substantial for the welfare of the people under their jurisdiction. They have enough power to earn a bad name for themselves,—as lacking in a political sense, or a sense of reality, or ability to do teamwork. But they have no means to undertake projects of national,—or local,—development in any material sense, if those projects do not chime in with the British Imperialist policy. The existence of Provincial Autonomy will only provide the Central authority with an excuse not to intervene and insist upon a certain minimum of administrative efficiency or progressive civilisation being maintained. Every Province has an immense leeway to make up—some more, some less,—in developing the resources of the territories and peoples in their charge. The States without exception are too backward not to have considerable lag in material development. But the presence of a heavy mass of unproductive debt, a hopelessly wasteful defence organisation, and of an excessively paid public service in all departments of government, make it impossible to find a surplus which could be expended on new projects of further development. Such resources, therefore, as may be available are pledged to the hilt, and for many more years to come, to the upkeep of these engines of British Imperialism, which would make the Provinces,—and, *a fortiori*, the States,—unable to raise the standard of living of their own peoples for a generation or more to come.

### Centre vs. Units

Does the Centre,—the Federation,—dominate, or the units preponderate? This is a difficult question to answer in the new Constitution. As already observed,



there is every margin of effective authority reserved to the Federal Government, and more particularly to the Governor-General, to uphold the authority of the Central Government in every conceivable emergency. And if that does not suffice, he can, by Proclamation, suspend the whole Constitution, abrogate the Federation, supersede the Legislature, and arrogate practically all power to himself.<sup>1</sup> A study of his "special responsibilities," detailed in Section 12 of the Act, co-related with a further study of the financial provisions in the Act, make it evident, that in every direction in which British hold upon India is to be maintained, the Governor-General is armed with powers and authority that would be proof against any ordinary means of being shaken or displaced.

But, though the Governor-General as the chief executive is empowered, in ordinary and extraordinary situations, to deal with every aspect of governing India, that does not mean that the Federal Government is equally powerful. The Governor-General is quite different from the Federal Government, which means the Council of Ministers of the Governor-General. The latter have very

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1. Section 45 (1) reads :—"If at any time the Governor-General is satisfied that a situation has arisen in which the government of the Federation cannot be carried on in accordance with the provisions of this Act, he may by Proclamation—

- (a) declare that his function shall to such extent as may be specified in the Proclamation be exercised by him in his discretion ;
- (b) assume to himself all or any of the powers vested in or exercisable by any Federal body or authority,

and any such Proclamation may contain such incidental and consequential provisions as may appear to him to be necessary or desirable to give effect to the objects of the Proclamation.

limited powers. The Provinces have a defined field of action, sufficient materially to detract from the authority and influence of the Federal Government, though not enough for the Provinces themselves to strike out upon original lines of local improvement. Under these conditions, it is impossible definitely and satisfactorily to answer the question put above. But it may be said that, on the whole, the authority and powers of the Central Government are maintained to a point, at which the exercise of real provincial independence becomes unlikely ; and that, should any Province try a fall with the Central Government, even in the concurrent field of action, the chances are that it would come out second best.

Apart from the distribution of powers and functions between the Federation and the federating units, there are cases in which their action may have to be mutual and overlapping. Provisions have, therefore, been included in the Act to provide for such cases in Part VI, Ss. 122-135, both inclusive. This portion of the Act opens with the general principle that :—

“ The executive authority of every Province and Federated State shall be so exercised as to secure respect for the laws of the Federal Legislature which apply in that Province or State.” (122)

In exercising the executive authority to enforce the laws of the Federal Legislature, regard must, of course, be had, as a sort of reciprocity, to the interests of the local unit concerned. But, so far as the Provinces are concerned, the Governor-General is empowered to *direct* any Governor to act as his agent in regard to tribal areas, or in regard to the reserved departments of the Central Government, *viz.*—

Defence, External Relations, and Ecclesiastical affairs.  
(S. 123).

Even the executive authority of the Federation may be delegated, by the Governor-General in any matter in which the Government of the Province concerned consents to be entrusted with such powers, either conditionally or unconditionally. (124 (1)).

The Federal Legislature may, likewise, impose duties or confer powers upon a Provincial Government, its officers or authorities, even on subjects on which it is not competent to a Provincial Legislature to make laws.

It is in such matters that difficulties would, in practice, most frequently arise. For the law to be enforced would be Federal; and therefore it would be possible,—and, indeed, necessary,—for the Federal authorities concerned to issue explanations, or instructions for the enforcement of the law. The actual enforcement of each such law, however, must be of necessity within the jurisdiction of the Provincial Government. The officers of the latter may be entrusted with the necessary powers to carry out the law; and the Central Government would, naturally, pay such officers while engaged in enforcing the Federal laws (124 (4)). But this by itself does not avoid all the possible difficulties and contretemps. The moment a case occurs, in which a Provincial Government may be interested on the opposite side, as it were, to that in which the Federal Government are interested, the Provincial officers might find it extremely difficult to reconcile their provincial sentiment with their duty to the Federal authority paying for their services.

The Governor-General would, ordinarily, satisfy himself in such matters by means of inspection through

his own nominees; and these may constitute a Federal Inspectorate, even if the actual administration of Federal Laws is entrusted to the local officers. The supremacy of the Federal Executive is expressly provided for in Section 126, which enjoins upon every Province so to exercise its own executive authority as not to impede or prejudice the exercise of the executive authority of the Federation. The latter is even empowered to issue such **directions** to a Province, in this behalf, as may appear necessary to the Federal Government. And this right to issue directions to a Provincial Government is not confined to the Federal subjects proper, but may even extend to giving directions for carrying into execution in that Province of any Act of the Federal Legislature relating to a matter included in the concurrent list. So far, for instance, as the means of communications are concerned, the Executive authority of the Federation can give directions to any province as regards the construction and maintenance of such means of communications,—quite apart from the means of communications coming directly under the Federal authority as part of the Federal functions in connection with the **national defence**.

Should any province fail to give effect to such instructions or directions, the Governor-General is empowered,—acting in this discretion,—to issue the same directions,—or somewhat modified, as **orders** to the Governor (126(4)). Such *Orders* may even be issued regarding the manner in which the provincial executive authority is to be exercised “for the purpose of preventing any grave menace to the peace or tranquillity of India or any part thereof”. This may very easily bring to heel a Provincial Government pursuing, let us say, a policy of active sympathy with the Nationalist (or Socialist) agitation; or

another believed, at the headquarters, to have leanings in favour of one community to the prejudice of the other. In no Province could such contingency really arise, so long as the Governor sticks to the letter of the powers and authority given him by law. And even if the Governor happens to have leanings on the Nationalist (or Socialist) side, the supreme Government have reserved to themselves sufficient authority to compel such satraps to obey orders.

### **Broadcasting**

There are two subjects,—one relatively modern, the other of time immemorial importance in Indian national economy,—in which it is likely that there may be friction between the Federal and Local authorities. As regards Broadcasting, Provinces are entitled to be entrusted with functions, which would enable them to make or use transmitters in the Province, and to impose fees on the construction or use of Transmitters, or the use of receiving apparatus.<sup>1</sup> The Federal Government may, indeed, have their own such instruments of either sort; and over those no Province or State would be allowed any authority. Even as regards instruments and apparatus which are within the jurisdiction of the Province, the Federal Government are entitled to impose conditions for the exercise of such functions entrusted to the Provinces, including the finances of such services. But the Federal Government are not entitled to impose such conditions, which would regulate the matter broadcast from the Provincial instruments, (129(2)), except, of course, in the broad case of a contingency in which the Governor-General considers the peace and tranquillity of India, or any part thereof is endangered.

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1 op. section 129.

### Water Supply

As regards Water supply, especially in these days of extensive Irrigation works upon large rivers flowing through more than one Province or State, the chances of a conflict between the units concerned are very real indeed. It is possible for a State or a Province, in which a River rises, to obstruct or divert its flow, or to withdraw water from it, to such an extent that, in the lower reaches of the same stream, flowing through another Province or State, there may not be sufficient water supply for the irrigation of the lands of that province. The latter's whole economy may be thrown out of gear because of such disturbance of its water-supply. Sections 130-134 accordingly provide for proper investigation by a competent Commission of any complaint made by a Province or a State to the Governor-General. The recommendations of the Commissions would, when turned into the form of decision or order by the Governor-General, have all the force of a legal decision, and would be enforced as such.<sup>1</sup> Room for appeal to His Majesty in Council is reserved expressly to the State or Province which feels itself aggrieved by such a decision; but the decision of the King in Council will be final, and will override,—as also the decision of the Governor-General unappealed against,—all local legislation or executive action inconsistent with such decision.

Section 135 provides for an Interprovincial Council, appointed on the recommendation of the Governor-General, to enquire into any dispute between Provinces, as also to investigate and discuss subjects of common interest to more than one unit in the Federation, and make

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1 cp. section 131.

recommendations for a co-ordinated policy. This is a clumsy, expensive, but necessary means of securing internal co-operation between the several units of the Federation.

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## CHAPTER III.

### THE PROVINCIAL EXECUTIVE.

#### The Governor.

The Provincial Governor is appointed, under Section 48<sup>1</sup> of the Act of 1935, by a Commission from His Majesty under the Royal Sign Manual.

1. Section 48(1): "The Governor of a Province is appointed by a Commission under the Royal Sign Manual.

(2) The provisions of the Third Schedule to this Act shall have effect with respect to the salary and allowances of the Governor and the provision to be made for enabling him to discharge conveniently and with dignity the duties of his office.

Schedule III to the Act provides the following scales of salaries to the Governor-General and the Governors of Provinces.

The Governor-General	...	...	Rs. 250,000 annually
" Governor of Madras	...	...	" 120,000 "
" " " Bombay	...	...	" " "
" " " Bengal	...	...	" " "
" " " United Provinces	...	...	" " "
" " " Punjab	...	...	" 100,000 "
" " " Bihar	...	...	" " "
" " " the Central Provinces & Berar,	...	...	" 72,000 "
" " " Assam	...	...	" 56,000 "
" " " N. W. F. Province	...	...	" " "
" " " Orissa	...	...	" " "
" " " Sind	...	...	" " "

By clause 2 of the Schedule, Travelling Expenses and Equipment Allowances to these officers are authorised to be fixed from time to time by Orders in Council of His Majesty. Further "such provision shall be made for enabling the Governor-General and the Governors to discharge conveniently and with dignity the duties of their offices as may be determined by His Majesty in Council". There is, in this, no hint of any variation in these allowances "from time to time",—and certainly no suggestion that they may be in some reasonable ratio to the per capita income of the people.

Clause 3 provides for leave allowance,—to be fixed by order in Council to these officers; and clause 4 allows them Customs exemption according to Orders in Council. Clause 5 provides for salary &c. on the same scale to the acting Governor-General and Governor as to the substantive corresponding officer; and clause 6 makes all these sums payable out of, and charged upon,—i. e. non-votable by the Legislature—the revenues of the Federation in the case of the Governor-General, and of the Province in the case of the Governor.



The Third Schedule to the Act provides for certain allowances by way of travelling and equipment expenses, which are fixed from time to time by Orders in Council by His Majesty, and which range from £3,000/- to the Governor-General, downwards as shown in the Table annexed. They are, under the Act of 1935, left to be determined from time to time by Orders in Council of His Majesty.<sup>1</sup>

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1. Cp. Sections 78-79 of the Act of 1935.

### Note on the Allowances payable to the Pro

According to an Order in Council laid before Parliament at its for the Allowances payable to the Governors of Indian Provinces to and dignity.

Annual Allowance	Madras	Bombay	Bengal	United Provinces	Punjab
1. Renewal of Furniture official residences	Rs. 14,000	23,000	20,500	4,000	3,000
2. Sumptuary Allowance.	18,000	25,000	25,000	15,000	12,000
3. Military Secretary & his Establishment	112,000	136,000	121,000	116,000	88,000
5. Band, Bodyguard	169,000	123,400	150,000	...	...
6. Surgeon & Establishment	36,000	33,000	33,600	34,800	...
7. Tour Expenses	113,000	65,000	122,000	125,000	6,000
8. Miscellaneous including maintenance of Cars	92,000	108,000	100,000	23,000	21,700
9. Maintenance of furniture in official residences	21,500	25,000	34,000	14,500	10,500
Total of first 9 items.	575,500	538,400	606,100	332,330	141,200
10. Equipment and Travelling Charges when appointed from Europe	£. 2,000	£. 2,000	£. 2,000	£. 1,800	£. 1,500

Leave Allowance Rs. 4,000 per month to first 6; 3,000 and Exchange at the rate ruling on the day. Maximum for special

vincial Governors under an Order in Council

opening in November 1936, the following scales have been prescribed enable them to discharge the duties of their office with convenience

Bihar	C. P. & Berar	Assam	N. W. F. P.	Sind	Orissa	Remarks
Rs.						
4,500	2,900	...	1,750	1,000	2,500	Maximum allowed
6,000	6,000	6,000	6,000	8,000	6,000	Maximum ..
75,000	61,000	63,000	68,000	59,000	40,000	Annual
...	...	...	...	...	...	Allowed only to the first 3 Provinces
60,000	26,000	55,000	18,000	30,000	35,000	Annual
21,700	1,600	14,100	14,100	17,800	11,500	
13,000	9,800	4,000	5,000	4,000	8,000	
108,200	107,300	142,100	112,850	129,800	103,000	
£. 1,500	£. 1,200	£. 1,100	£. 1,200	£. 1,200	£. 1,200	Payable only if resident in Europe at time of appointment

Rs. 2,750 p. m. to the rest. No allowance for leave to Acting Governor reasons could be Rs. 5,500 p. m. by Secretary of State.

Since the War, the principle of Overseas Allowance has been generally adopted, and extended to all the members of the higher public services imported from abroad. Passage allowance is likewise given to such Public Servants four times during the course of their normal service of 25-35 years in this country.

The allowances for travelling and Equipment are not the only items in addition to the Salaries that may be given to the satraps. The allowances supposed to be needed to enable these officers to discharge "conveniently and with dignity" the duties of their office, in the case of the Governor-General amount to Rs. 15 lakhs per annum, without including the salary, initial equipment and travelling allowance, leave salary, &c. For the other Governors the scale, according to the latest order in Council, is given in the Table annexed.

### **Recruitment for Governorships**

The Governors of Provinces are generally appointed for a period of 5 years; and have been, since 1925, allowed to take leave during that term for an aggregate period of four months. It seems to be a convention of the British Constitution that, whereas the Governor-General is appointed by the King on the advice of the Prime Minister, the Governors of the Presidencies are appointed by the King on the advice of the Secretary of State for India. The latter cannot, constitutionally, advise the King to appoint himself; *i.e.*, the Secretary of State, to any posts to which he advises appointment. Nor, it seems, can the Prime Minister give his own name for appointment as the Governor-General. If he does, as Mr. Ramsay Macdonald was reported in 1930 to have done before Lord Willingdon was finally appointed to the post, the King is entitled to de-

mand one or two other names at the same time, to enable him to make a fit and proper choice.

Governors of Indian Provinces are appointed from mainly two classes: (A) British public men, or (B) Indian Civil Servants.

(A) The former comprise (i) ornamental or impecunious members of the British aristocracy; (ii) useful parliamentarians, who may have outlived their season of direct usefulness to their Party; (iii) or distinguished Civil or Military servants of the Crown.

(i) They are generally appointed only to the Presidency Governorships, which have always enjoyed a certain degree of titular eminence. These are not people distinguished particularly for their intellectual eminence, administrative acumen, or political sagacity,— especially if they happen to belong to the high nobility or titled gentry of Britain.

(ii) Even when they are selected from among Parliamentarians, they may be more noted for a dogged sense of duty, or a convenient docility, than for any brilliance, insight, or sympathy. But they are supposed, by tacit convention, to be more adaptable to the changing forms of a growing constitution; more amenable to democratic ways and usages; and, therefore, more suitable in these important posts, than any selections from the experienced administrators in India.

(iii) Distinguished public servants of the Crown in Great Britain have not even these claims for such appointments. They are, frankly, in the nature of personal or political rewards to their friends or followers by British politicians, which, however, do not always prove failures in these exalted posts.

### **Governors from Royal Family or Indian Princes**

In this connection two side issues might be mentioned in passing. There have been suggestions in the past for appointing Provincial Governors from (a) the British Royal Family, or (b) from the Indian Princely Houses. For the former, there is the precedent of the Duke of Connaught appointed Governor-General of Canada, or of the Earl of Athlone that of South Africa. For the latter the glowing traditions of the greatest of the Mughals have even now a fascination for the sophisticated imagination, which might call forth a spurt of enthusiasm for any such experiment. On every ground of political propriety or constitutional wisdom, it would be inadvisable to introduce such elements into the day-to-day working of the new constitutional machinery. For these classes are,—generally speaking,—imbued with sentiments and living in an environment, in which the realities of life or popular thought have little bearing. Their vision is thus bound to be narrow, their judgment warped, their ideals of life obsolete, if not reactionary. Hence, at a time when it is claimed India is entering upon a new constitutional experiment, such elements would be the least suitable, being calculated to complicate unnecessarily the new machinery.

### **Civilians as Governors**

(B) As for the second class of people from among whom Governors of Indian Provinces are chosen, ever since the first new province of Agra was formed in 1834, the convention has been laid that the chief of such provincial administrations shall be selected from among distinguished Civil Servants of the Crown in India. These are usually experienced administrators, having grown grey in the

country's organised service. But this very experience, this very knowledge of the country,—or what passes for such knowledge in those classes,—is apt to prove a hindrance. The traditions of the Indian Civil Service require that an officer in that select body of men should not be restricted either to one province, or to one department of the Public Service,—unless he is an utter dunce. The constant changes from post to post, from province to centre and *vice versa*, make it impossible for him to acquire a thorough knowledge of any department, or of any province,—especially when an individual is not a native of that region, and has no direct personal knowledge of his own regarding the ways and means of the peoples, their customs and manners, their ideals and ambitions. In these days of rapid communication, the central authority necessarily maintains a domination over the local administrator, which as necessarily leaves no room for the development of initiative, or a sense of personal responsibility, among the officials actually engaged in routine administration. Hence, the feeling is steadily growing that the Indian Civil Servant,—particularly the European specimen,—is becoming more and more a descendant and emulator of the immortal Joe Sedley rather than of the Metcalfes and the Cottons, the Lawrences and the Birds, who are believed to have known and loved and ruled India for her own good a hundred odd years ago. From them to expect any special qualification, aptitude, or sympathy, fitting the holder of such attributes to be a Governor of a modern Province, is a hope or belief more and more doomed to disappointment by the logic of events. These Public Servants, in the course of their service, inevitably come to contract prejudices and sympathies, which would not permit them to claim the one quality of absolute impartiality that was in the last century claimed to be their distinguishing feature. Today their own interests,—

as an economic group,—are so identified with the governing and exploiting class in general, that the Indian people do not find the supposed knowledge of the country, or experience in administering its affairs, to be of any real advantage to them. Besides, the public servant, especially of the higher class, is increasingly becoming the representative of a class, in permanent antagonism to the other class; and, as such, his claim to general sympathy with the governed, or personal impartiality, becomes unavoidably mythical.

### **Indianisation of Governors**

These remarks apply as much to the Indian born as to the European born Civil Servants in India, who provide the recruiting ground for appointment to Governorships in Indian Provinces. The Indian becomes just as much class-conscious, and is as jealous of his salary and allowances,—however unconscionably high they may be,—as any European. And he has not the European's excuse to be indifferent to the level of national prosperity in general, which an outsider may well claim. Even communal bias is not always utterly absent from an Indian Civil Servant arriving at an eminence at which his prospects of promotion to a Governorship may be calculable. The general argument in favour of Indianisation of the Public Services in the country apply as much in this case as in that of any other appointments hitherto held by Europeans. But the experience of such Indians as have been substantive or acting Governors in Indian Provinces is not such an unqualified success as to make an irresistible impulse for its repetition. True, most of such cases relate, not to the experienced public servants of the Crown, regularly passed through the routine of the Service ranks, like a Lawrence, a Strachey or a Hailey. They have



been rather men of political eminence, or professional distinction, in the public life of the country, who, by exigencies of Imperial diplomacy, had to be appointed to such posts. And if, after such record, and in such posts, they exhibited weakness, lack of familiarity with the duties and privileges of the post, or indifference to its opportunities, it would not be quite fair to use their example for condemning or excluding the Indian born public servant from such posts. But, until the Governor of a Province becomes directly responsible for the administration of his charge to the peoples of the Province, or evolves into a mere figurehead it would be impolitic absolutely to generalise that Indians alone should be selected for such posts.

### **Personality of the Governor**

The bureaucratic machine in India being carefully organised and minutely regulated by innumerable codes, regulations, or conventions, the individuality of the Governor does not count for very much in the actual working of the provincial administration in its routine aspect. Even from the point of view of initiative in matters of broad policy, the individual Governor would have very little scope, since, until the Act of 1935, the final responsibility for the government of India rested with the British Parliament, in relation to which the Indian Governors were no more than servants of the Crown. The Secretary of State's powers of superintendence, direction, and control were all-embracing; and, in the last resource, even the Governor-General had to obey orders, or vacate his post. There have been cases of clash of personalities or conflict of ideals in the past; but the example of a Northbrook or a Curzon, or of a Buckingham or a Fuller, were sufficiently clear to prevent any such conflicts happening since.

But, in the theory of the Act of 1935, the responsibility of Parliament is considerably relaxed, so far as the government of the Provinces is concerned. Say the authors of the Report of the Joint Select Committee of Parliament :—

"The scheme of Provincial autonomy, as we understand it, is one whereby each of the Governor's Provinces will possess an Executive and a Legislature having exclusive authority within the Province, in a precisely defined sphere, and, in that exclusively provincial sphere, broadly free from control by the Central Government and Legislature".<sup>1</sup>

### **Powers of Control &c. in the Secretary of State**

There is, indeed much in the Act of 1935, which embodies the essence of Sections 2, 33, and 45 of the Act of 1919, vesting the fullest powers of superintending, directing and controlling the government of India all over the country in the Secretary of State, and, under him, in the Governor-General-in-Council.\* But those provisions restrict the theoretic transfer of responsibility for the provincial administration from the British Parliament to the

#### **1. Para. 43, *op. cit.***

\*14.—(1) In so far as the Governor-General is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of, and comply with such particular directions, if any, as may from time to time be given to him by, the Secretary of State, but the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this section.

(2) Before giving any directions under this section the Secretary of State shall satisfy himself that nothing in the directions requires the Governor-General to act in any manner inconsistent with any Instrument of Instructions issued to him by His Majesty.

(Contd.—on page 71)

Provincial Legislatures only obliquely. We shall notice the substance of these indirect means of reservation or restriction of provincial autonomy in their place. Here it is enough to add that the Governors of the Presidencies, as well as of all other Governors' Provinces, are henceforth supposed to preside over a locally autonomous unit, with the actual Ministries responsible, within a prescribed ambit, to their own constituents in the Provincial Parliament. Accordingly, it is thought in some quarters that all Governors should be appointed from among British public men or distinguished servants of the Crown, as, presumably, these would be more familiar with the workings of a responsible government than those moulded in the traditions of the non-responsible Bureaucracy which has prevailed in India hitherto. So long as the British connection and domination is kept in tact,—as is but too clearly the case in the Act of 1935,—it is a matter of little importance to the Indian people whether these chosen to preside over Provincial administrations are sent out from Britain, or are promoted from their place in the routine

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*(Contd.—from page 70)*

“Section 54: (1) In so far as the Governor of a Province is by or under this Act required to act in his discretion or to exercise his individual judgment, he shall be under the general control of and comply with such particular directions, if any, as may from time to time be given to him by the Governor-General in his discretion, but the validity of anything done by a Governor shall not be called in question on the ground that it was done otherwise than in accordance with the provisions of this Section.

(2) Before giving any directions under this Section, the Governor-General shall satisfy himself that nothing in the directions, requires the Governor to act in any manner inconsistent with any Instrument of Instructions issued to the Governor by His Majesty.”

administration of the country. They may be all presumed to be equally hostile to Indian Nationalist ambitions. The Governor's personal responsibility remains practically unaffected to the Governor-General and to the Secretary of State,—and, through these, to the British Parliament in the ultimate analysis. Hence it is relatively a matter of no importance to choose between public servants of the Crown in India and those from Britain.

### **Dominion Analogy**

For the Governor to be made personally responsible for the administration of the Province to the chosen representatives of the Province involves a radical change in the very basis of the Act of 1935, which those who have the right and the power to ordain such changes will not be willing to effect. There are, indeed, ways and means by which the appointment of Provincial Governors could be brought within the range of popular and local responsibility. If the example of the Australian Commonwealth is followed, and the person to be appointed is allowed to be designated by the Provincial Legislature or by the responsible Provincial Government; or, still better, if the Irish Free State model is permitted to make the governorship entirely an elected office, the prospects of a gubernatorial responsibility to the Provincial Legislature would be considerably improved. In the act of 1935, there is not a trace of evidence to support the view that Indian Provincial Governors are intended or could be made to follow the Dominions analogy, in their appointment or in their constitutional behaviour.

But even if there was the slightest ground to suppose that the British Government and Parliament would countenance such a radical departure from the entire basis for the present Constitution, there are reasons which may

not make the course unexceptionally desirable for India. The working of Parliamentary Democracy,—if that is the goal towards which the constitutional evolution of India is tending,—requires that the head of the executive should be free from any suspicion of party bias. The Governor, as conceived and designed in the Act of 1935, is, indeed, not a mere constitutional figurehead. He is given definite powers and special responsibilities, which will keep his role far more active than that of the British King; and so bring him within range of political partisanship, which cannot but make the present method of appointment occasionally unwelcome to the peoples of the Province. Nevertheless, to turn the Provincial Governors frankly into Party chiefs or nominees,—as American States' Governors are,—would presuppose a scheme of constitutional government wholly different from the lines on which we have progressed hitherto. A revolutionary change in all our conceptions of the constitutional practice as applied to governors may, in course of time, dispense altogether with such a fifth wheel to the coach of administration. But so long as the constitutional progress of India follows the evolutionary trend, it would be inadvisable to convert the Governorship into an elective office, directly responsible to the electors.

### **Traditions, Psychology, and Environment of Governors**

In actual practice, besides the definite powers, functions and responsibilities entrusted by law to the Governors, much will depend upon the personality of the Governor, the traditions of his office, and the environment surrounding him. The Governor's personality must needs vary with each individual officer; and so no general remark can be made in that connection. All that we can say, in this regard, is: that the influence of the

personal character, likes or dislikes of the Governor will extend at most to his immediate entourage; and that it is, even so, very closely restricted by the Act, as well as by the rules and conventions governing the Governor's dealings with his official collaborators and subordinates.

His personal influence upon the general life of the province will be an unknown quantity, which would, however, be generally exaggerated by the common human weakness in such matters. If Governors of Indian provinces learn, in the future, to resist the temptation of lending their names to any fad of the moment,—however laudable it may seem on the surface; and of giving a permanent, abiding shape to all their own ideals in government, they would confer a benefit proportionate to the eminence they enjoy in the scheme of Indian administration.

### **Traditions of the Governor's Office**

The traditions of the Governor's office, have hitherto made him a social as well as a political chief of the Province, its representative and spokesman in all official matters. The social leadership of the Governor may remain so long as we maintain a stratified society, and continue its system of snobbery. It is to be hoped, however, that the realisation, in a daily increasing volume, of the true task of government in a country like India, will diminish the importance of the so-called "Society" or social functions; and make the Governor more and more busy with the execution of the laws embodying the policies that his Government have sponsored.

### **Imitation of Britain**

The imitation or reproduction of English ideals or methods in India, which comes naturally to Britishers

familiar with their own problems,—whether they have been directly sent down by the British Government to administer Indian Provinces, or have been promoted from the Indian Services to the post,—must also be discontinued, if the actual government of the land is to be in harmony with the desires of the people and the conditions of their environment. The practice, likewise, of what Curzon once called “Departmentalism”, must also be modified, if a degree of elasticity is to be imparted to this constitution, which, by its actual wording, tends to be excessively rigid. The government of a living and growing people can never be achieved satisfactorily by a rigid constitution. Hence, pending its radical modification, the responsibility would lie heavy on those who have the duty of administering it, and who call upon the people to aid in working it, even though it is admittedly defective and generally unacceptable, to impart as much elasticity as is possible within the letter or the spirit of the Constitution, and the traditions of constitutionalism. The Bureaucratic mind has long since been acknowledged to be rigid, formal, inaccessible to new ideas, delighting in routine, and preferring the beaten track. That, if continued under the new regime, would spell the death beyond redemption of the slightest hope that any reasonable person might have entertained of making anything at all acceptable out of this constitution.

### **Environment of the Governor**

In speaking of the personality of the Governor, we have also said much that may explain the mentality,—the psychology,—of such an official; while the remarks as to the traditions of that office will also serve to explain the same phenomenon. The environment of the Governor,



consisting, as it has hitherto done, of sundried bureaucrats in the shape of Secretaries and Councillors, will now be modified,—only in so far as Ministers responsible to popular opinion, as reflected in the Legislature, will form the chief advisers of the Governor. The Councillors will disappear; and with them will vanish the most important of the bureaucratic element in the Governor's immediate entourage. The Private Secretary will, of course, still continue to be derived mainly from the Civil Service; but he will not have the same opportunities for infusing the bureaucratic spirit, even in the Presidency Governor's outlook, as he had when the Executive Councillors represented the most experienced (?) and the most rigid elements of the Civil Service. Even the Departmental Secretaries, though continuing to be in the main Civilians, will not have the same opportunities of access to the Governor,—except in regard to those items which are matters of his "Special Responsibilities"; or those in which by law he is required to exercise "his individual judgment". In these ways the preponderant influence of the exclusively bureaucratic elements will diminish,—though it cannot altogether disappear in the scheme of Constitution as at present devised. Even when the Indian element comes to replace the present preponderant British element in the superior ranks of the Civil Service, the traditions of the bureaucrat will die hard death. Hence the Governor's environment will continue to reflect the views and outlook of the permanent Public Servants,—in other words, of the Bureaucracy,—for a long while to come.

#### **Position of the India Element around the Governor**

The Indian,—and particularly, the popular,—element surrounding a Provincial Governor will, in the initial years at least, suffer from several handicaps. They will



be aware of their own ignorance of the mysteries of administration, and so will labour under an Inferiority Complex, which they will be unable to rid themselves of for years to come. The Governor, it is true, is required, by his Instrument of Instructions<sup>1</sup>, so to conduct the work of his Government, as to promote a sense of parliamentary as well as collective responsibility. But while his new Ministers lack knowledge of the working of the administrative machine, or even of general policy, he, the Governor, will have marvellous opportunities to be a *de facto* as well as *de jure* head of the executive Government of his Province, unless, indeed, he too is unfamiliar with the traditions of government in India.

Besides lack of experience and knowledge, the Indians surrounding the Governor,—or ordinarily coming into contact with him,—are likely to be imbued with a degree of snobbishness, which will make them imitate slavishly, where they are naturally afraid to originate boldly. Their education and general upbringing is such that things British or European have a clear preponderance in their scale of values. This may prove detrimental to the growth of native talent or capacity.

There is much, therefore, in the environment of the Governor,—Indian or British,—which will maintain, for years to come, standards of administration, canons of public propriety, forms and methods of constitutional procedure or rules of social intercourse, which must inevitably give heavy odds in favour of the present system being maintained in all its essentials.

#### The scope and nature of Provincial Executive Authority

The Provincial Executive is divided into two main parts: the Governor, and his Council of Ministers. There

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1. Section 53 of the Act of 1935, and appendix to this Chapter.

may be such officials, as, like the Advocate General, may be specially appointed by the Governor to advise the Government.<sup>1</sup> But there are, in the Provinces, no officers comparable to the Financial Adviser or other Counsellors of the Governor-General;<sup>2</sup> and there are no Reserved Departments, such as Defence, Foreign Affairs &c. as in the Federal Government. Section 49 defines the scope of the Provincial Executive as follows:—

- “(1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this Section shall prevent the Federal or the Provincial Legislature from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any Court, Judge, or officer or any local or other authority.
- (2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws.”

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1. 55.—(1) The Governor of each Province shall appoint a person, being a person qualified to be appointed a Judge of a High Court, to be Advocate-General for the Province.

(2) It shall be the duty of the Advocate-General to give advice to the Provincial Government upon such legal matters, and to perform such other duties of a legal character, as may from time to time be referred or assigned to him by the Governor.

(3) The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

(4) In exercising his powers with respect to the appointment and dismissal of the Advocate-General and with respect to the determination of his remuneration, the Governor shall exercise his individual judgment.

2. Cp. Sections 11 and 15 of the Act of 1935.

The distinctive feature of the Act of 1919, Dyarchy, —has been abolished, but the generally sweeping wording of this Section does not automatically abrogate existing Indian laws, which confer specific powers or functions upon specified authorities. At the same time, it is made possible for the Federal or the Provincial Legislature to enact laws which may confer such functions upon subordinate authorities, for the sake probably of convenience in administration.

The executive authority is to be exercised by the Governor in the name of the King-Emperor, either directly, or through officers subordinate to him<sup>1</sup>. This

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1. 59.—(1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.
- (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.
- (3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.
- (4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.
- (5) In the discharge of his functions under subsections (2), (3) and (4) of this section the Governor shall act in his discretion after consultation with his ministers.

authority is to be exercised, according to the next following section, by the Governor on the advice of his Council of Ministers,—who are to have a collective responsibility in such matters,—except in cases where he has to act “in his discretion”, or exercise “his individual judgment”. Says Section 50:—

- “(1) There shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion :

Provided that nothing in this subsection shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.

- (2) The Governor in his discretion may preside at meetings of the Council of Ministers.
- (3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.”

The difference between a Governor “acting in his discretion” and “exercising his individual judgment” lies in this: that while in the former case the Governor need not consult at all his Ministers, in the latter he may consult them, but is not bound by their advice. In both cases the Ministers’ opinion is ineffective, either because it is not invited at all, or because, though invited, is expressly made not binding upon the Governor. There can be, moreover, no question as to whether a matter

was within the Governor's sole discretion, or was one in which he could exercise his individual judgment, *i.e.* consult his Ministers, but not necessarily follow their advice; for the mere decision or declaration by the Governor, *in his discretion, i.e.* without consulting his Ministers at all that it was a matter exactly of the kind that he had treated it to be, would be final under the Section<sup>1</sup>.

### Kinds of Executive Action

There are thus three distinct grades, or kinds, of the executive action of the Provincial Governor: (1) Governor acting on the advice of His Ministers; (2) Governor acting *in his individual judgment*, in which he may have

#### 1. Cp. Section 50 (3):—

Says the Report of the Joint Select Committee of Parliament, considering the Act of 1935 when it was still a Bill before Parliament: "We agree that it is desirable that the Governor's special responsibilities, *over and above the matters which are committed to his sole discretion, (Italics ours)* should be laid down in the Act itself, rather than that they should be left to be enumerated hereafter in the Instrument of Instructions ... (para 74.)

We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes up for decision, the decision is to be that of the Governor to the exclusion of the Ministers. In no sense does it define the sphere from which the action of Ministers is excluded. *In our view, it does no more than indicate the sphere of actions in which it would be constitutionally proper for the Governor, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it.* If in his own unfettered judgment, he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which the Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, of daily occurrence. We leave for later consideration the list of special responsibilities themselves, and the manner in which they are defined; but if we have rightly appreciated their place in the Constitution, it appears to us undesirable to seek to define them with meticulous accuracy, though we consider that the general scope and purpose should be set out with sufficient precision.

para. 75 Op. Cit.

consulted the Ministers, but if he cannot view the matter as his Ministers view it, he can act on his own opinion, if necessary in opposition to the opinion of his Ministers; and (3) Governor acting *in his sole discretion*, i. e., matters in which he need not consult his Ministers at all.<sup>1</sup>

### Limits of Executive Authority

Let us proceed next to consider what are the limits of these three divisions of the executive functions of provincial Governments.

Numerically, the widest section will be of those functions of Government, in which the Governor must act on the advice of his Ministers. But these matters will, essentially speaking, be of routine character in the administrative mechanism; and will have little scope for any initiative, or change in fundamental policy. The real scope for the Ministers will be in those matters in which the Provincial Legislature is entitled to legislate, either exclusively, or concurrently with the Federal Legislature. Executive action will needs follow legislation, to enforce the legislation. But even here there are safeguards in the shape of subordination of the Governor to the Governor-General;<sup>2</sup> and in the right of the Governor to grant or withhold sanction to the introduction

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1. There is, apparently, under Section 59, a fourth class of actions, in which the Governor is to act in his discretion *after consultation with his Ministers*. These functions relate to the making of rules by the Governor for the division of work among his Ministers, for the authentication of orders and other instruments of Government, and for the supply of information to the Governor, especially on any question of provincial administration which may involve his special responsibility. Similarly, in making rules to regulate procedure in the Legislature, in certain matters, the Governor must consult the President of the chamber affected, cp. Section 84, (1) proviso.

2. Compare Sec. 54 above. See post chapter VI.

or discussion of certain classes of Bills in the Legislature, to recommend other Bills, to make Ordinances and promulgate Acts; <sup>1</sup> or in the shape of his veto over a Bill passed by a Provincial Legislature, as also in his power to reserve a Bill for the signifying of His Majesty's pleasure thereon. We shall discuss these safeguards, reservations or restrictions more fully when we come to deal with the Provincial Legislatures. Here we may repeat that however extensive in appearance the field assigned to the Constitutional advisers of the Governor, it is rigidly enclosed in a barbed wire fence, and contains very little grounds for any fruitful experiment for the political advance or economic emancipation of the Indian people.

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1. 88.—(1) If at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require :

Provided that the Governor—

- (a) shall exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor-General's previous sanction to the introduction thereof into the Legislature ; and
  - (b) shall not without instructions from the Governor-General, acting in his discretion, promulgate any such ordinance if a Bill containing the same provisions would under this Act have required the Governor-General's previous sanction for the introduction thereof into the Legislature, or if he would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the Governor-General.
- (2) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—
- (a) shall be laid before the Provincial Legislature and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or, if a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council ;

(continued on page 84)



(continued from page 83)

- (b) shall be subject to the provisions of this Act relating to the powers of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature assented to by the Governor; and
- (c) may be withdrawn at any time by the Governor.
- (3) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature assented to by the Governor, it shall be void.

89.—(1) If at any time the Governor of a Province is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion, or to exercise his individual judgment, he may promulgate such ordinances as in his opinion the circumstances of the case require.

(2) An ordinance promulgated under this section shall continue in operation for such period not exceeding six months as may be specified therein, but may by a subsequent ordinance be extended for a further period not exceeding six months.

(3) An ordinance promulgated under this section shall have the same force and effect as an Act of the Provincial Legislature assented to by the Governor, but every such ordinance—

- (a) shall be subject to the provisions of this Act relating to the power of His Majesty to disallow Acts as if it were an Act of the Provincial Legislature;
- (b) may be withdrawn at any time by the Governor; and
- (c) if it is an ordinance extending a previous ordinance for a further period, shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.
- (4) If and so far as an ordinance under this section makes any provision which would not be valid if enacted in an Act of the Provincial Legislature, it shall be void:

Provided that for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, an ordinance promulgated under this section shall be deemed to be an Act of the Provincial Legislature which has been reserved for the consideration of the Governor-General and assented to by him.

(5) The functions of the Governor under this section shall be exercised by him in his discretion but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

Provided that if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General, but in that case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.



### Discretionary Powers and Functions of the Governor.

Mainly because the Constitution contained in the Act of 1935 is an experiment and an instalment, the executive authority of the Governor is buttressed by : (a) certain powers and functions to be exercised on his sole discretion, *i. e.* without any consultation with his Ministers ; (b) certain other powers and functions, which he is to exercise in his individual judgment, *i. e.*, those in which he may consult his Ministers, but is not bound by their advice; *e. g.* certain specified "special responsibilities", in the discharge of which he may consult his Ministers, but is, if he thinks it necessary to do so, entitled to overrule their advice; (c) certain concurrent powers of legislation,<sup>1</sup> apart from the rights to grant his previous consent to the introduction of certain Bills in the Legislature, or to recommend certain other Bills, to withhold his assent to a Bill passed by the Legislature, to reserve it for consideration by the Governor-General, or for consideration by His Majesty; and (d) certain overriding powers including the suspension of the entire Constitution in the Province.

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1. Cp. Section 90 of the Act.

90.—(1) If at any time it appears to the Governor that, for the purpose of enabling him satisfactorily to discharge his functions in so far as he is by or under this Act required in the exercise thereof to act in his discretion or to exercise his individual judgment, it is essential that provision should be made by legislation, he may by message to the Chamber or Chambers of the Legislature explain the circumstances which in his opinion render legislation essential, and either (a) enact forthwith as a Governor's Act a Bill containing such provisions as he considers necessary; or (b) attach to his message a draft of the Bill which he considers necessary.

(2) Where the Governor takes such action as is mentioned in paragraph (b) of the preceding subsection, he may, at any

(Continued on Page 86)

By Section 54 of the Act of the 1935, the Governor is placed under the general control of the Governor-General in all matters in which he is required to act in his discretion, or in his individual judgment.<sup>1</sup>

Section 53 lays down the procedure for the issue of these Instruments of Instructions to the Provincial Governors.<sup>2</sup> The general nature of the Instrument of Instruc-

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( Continued from Page 85 )

time after the expiration of one month, enact, as a Governor's Act, the Bill proposed by him to the Chamber or Chambers either in the form of the draft communicated to them, or with such amendments as he deems necessary, but before so doing he shall consider any address which may have been presented to him within the said period by the Chamber or either of the Chambers with reference to the Bill or to amendments suggested to be made therein.

- (3) A Governor's Act shall have the same force and effect, and shall be subject to disallowance in the same manner, as an Act of the Provincial Legislature assented to by the Governor and, if and so far as it makes any provision which would not be valid if enacted in an Act of that Legislature, shall be void: Provided that, for the purposes of the provisions of this Act relating to the effect of an Act of a Provincial Legislature which is repugnant to an Act of the Federal Legislature, a Governor's Act shall be deemed to be an Act reserved for the consideration of the Governor-General and assented to by him.
- (4) Every Governor's Act shall be communicated forthwith through the Governor-General to the Secretary of State and shall be laid by him before each House of Parliament.
- (5) The functions of the Governor under this section shall be exercised by him in his discretion; but he shall not exercise any of his powers thereunder except with the concurrence of the Governor-General in his discretion.

1. Cp. ante P. 71

2. The text of an Instrument of Instructions to a Provincial Governor is given in the Appendix to this Chapter.

tions to the Provincial Governor may best be gauged from the following observations of the Report of the Joint Select Committee of Parliament on the Government of India Bill, 1935 : ( Para 73. )

“ The Instrument of Instructions might direct the Governor to be guided generally by the advice which he receives from his Ministers, but reserve to himself a very wide discretion to act upon his own responsibility when the circumstances seemed so to require.....Or the Instrument might specify certain particular matters with regard to which the Governor might exercise his discretion, whatever the advice of his Ministers might be.”

As regards the matters which by the Act are left to the sole discretion of the Governor, the following list, compiled from the various sections of the Act, is, if not exhaustive, sufficiently illustrative to indicate the scope and nature of the absolute discretionary powers given to the Governor.

The Governor is authorised to act in his discretion in the following cases :

- (1) Under Section 50 : he may preside at meetings of the Council of his Ministers ;
- (2) decide any question whether any matter is, or is not, one in which the Governor is required to act in his discretion, or to exercise his individual judgment.
- (3) Under Section 51 (5) : choose, summon, or dismiss his Ministers, and to determine their salaries, until the same are fixed by an Act of the local legislature.
- (4) In order to combat crimes of violence committed with a view to overthrow the Government as by law established, the Governor may direct that some of his specified functions shall be exercised

by him in his discretion; and during the currency of such directions, he may authorise any official to speak and take part in the proceedings of the Legislature, or the joint sitting of the Chambers, as the case may be.

- (5) Under Section 58: to make rules for securing that no records or information relating to the sources from which information has been or may be obtained, with regard to the operations of persons committing or conspiring to commit crimes of violence intended to overthrow the Government as by law established, shall be disclosed by any member of any Police Force in presence of another member of that force, except under directions of the Inspector General or Commissioner of Police; or to any other person (including, presumably, the Minister in charge of the Police), except in accordance with the directions of the Governor.
- (6) Under Section 59: to make rules: (a) for the authentication of the Orders and other instruments of Government; (b) for the more convenient transaction of the business of the Provincial Government; (c) for the distribution of the work amongst the Ministers, except such business as is entrusted to the Governor to be transacted in his discretion; (d) to include provisions in these rules requiring Ministers and Secretaries to Government to transmit to the Governor all information regarding the Provincial Government as may be mentioned in the rules, or as the Governor may otherwise require to be transmitted to him; and, in particular, requiring the Minister to bring to the notice of the Governor, and the appropriate Secretary to bring to the notice of the Minister concerned and of the Governor, any matter under consideration by him which involves or appears to him likely to involve any special responsibility of the Governor.

- (7) Under Section 62 : To summon or prorogue the Legislature, or to dissolve the Legislative Assembly;
- (8) Under Section 63 : To address the Legislative Assembly or either Chamber thereof in a Bicameral Legislature, and to require the attendance of the members.
- (9) To send messages to the Chamber or Chambers of the Provincial Legislature in regard to a Bill pending before that body or for any other purpose.
- (10) Under Section 69 : To remove certain disqualifications for a person to be a member of the Provincial Legislative Assembly or Council.
- (11) Under Section 74 : To summon the two Chambers of a Bicameral Legislature to a joint sitting for the purpose of deliberating and voting on a Bill which it appears to the Governor relates to Finance, or affects the discharge of any of his special responsibilities, even though twelve months have not passed before the Bill was passed by the Legislative Assembly, but not presented to the Governor for his assent.
- (12) Under Section 75 : To assent to any Bill passed by the Provincial Legislature and presented to him for the purpose, or to withhold assent thereto, or to reserve the Bill for consideration by the Governor-General; or to return the Bill together with a message requesting that the Legislature will reconsider the Bill, or any specified portion thereof, and also to consider the desirability of introducing any such amendments as the Governor may *recommend* in his message.
- (13) Under Section 78 : To decide any dispute whether any proposed expenditure falls within a class of expenditure charged on the revenues of the Provinces, which is not subject to the vote of the Provincial Legislature.

(14) Under Section 84 : To make rules, after consultation with the Speaker, or the President, for regulating the procedure of and the conduct of business in the Legislature.

(a) as regards any matter which affects the discharge of any functions of the Governor to be exercised in his discretion, or in his individual judgment;

(b) to complete in time the financial business of the Legislature;

(c) to prohibit the discussion or the asking of any questions on any matter connected with an Indian State, unless the Governor is satisfied that the matter affects the interests of the Provincial Government, or of a British subject ordinarily resident in the province, and so consents to the matter being discussed, or the question being asked;

(d) to prohibit the discussion of or asking questions on any matter connected with the relations between His Majesty, or the Governor-General and any foreign State or Prince, unless the Governor in his discretion consents to such discussion.

(e) or the discussion, except as regards estimates of expenditure, of any matter connected with the tribal areas, or arising out of or affecting the administration of an excluded area, or asking questions on the same;

(f) or the discussion of the personal conduct of the Ruler of any Indian State, or of a member of the ruling family thereof; or asking questions on the same.

It must be noted that if a rule made by the Governor in these behalf is inconsistent with any rule by the Chamber, the Governor's rule prevails;

(g) to make rules for the procedure to be followed at joint meetings of the two Chambers in relation to the preceding purposes.

- (15) Under Section 86: To direct that no further proceedings should be taken with reference to a Bill, Clause, or Amendment, in relation to which the Governor-General certifies that the discussion of the Bill introduced or proposed to be introduced in the Provincial Legislature, or of any Clause or Amendment thereof, would affect the discharge of his special responsibility in regard to the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof.
- (16) Under Section 89: To promulgate Ordinances when he is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of enabling him satisfactorily to discharge his functions entrusted to his sole discretion or regarding which he has to exercise his individual judgment.<sup>1</sup>
- (17) Under section 90: To enact Governor's Acts, or to suggest a Draft for the Governor's Act to be passed by the Legislature, if at any time it appears to him that for the purpose of enabling him satisfactorily to discharge the functions entrusted to his sole discretion, or on which he has to exercise his individual judgment, provision should be made by legislation.
- (18) Under section 92 to make regulations for the peace and good government of an excluded or partially excluded area in a Province.
- (19) Under Section 93: To make a Proclamation, when the situation so requires, that his functions as Governor will be exercised by him in his

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1. This is apparently different from the power under section 88 to promulgate ordinances when the Legislature is not in session; whereas section 89 seems to apply whether or not the Legislature is in session. Ordinances under section 88 may accordingly be such as are advised by the Ministers. Again Ordinances under section 89 are only in regard to his discretionary powers or those concerning his individual judgment; while those under 88 are in respect of the whole field of the Provincial executive authority.

discretion to such extent as is specified in the Proclamation. Such a Proclamation may contain all incidental or consequential provisions, which appear to the Governor to be necessary or desirable to give effect to the objects of the Proclamation; and such provisions may suspend wholly or partially the operation of any provisions of this Act relating to a Provincial body or authority, except the functions of a High Court.

(This means the suspension of the whole Constitution, except the portion regarding a High Court and including the power to make laws for the Province). No such Proclamation shall be made by a Governor without the concurrence of the Governor-General in his discretion, and must be submitted to the Secretary of State.

- (20) Under Section 108: Unless his previous sanction is given, no Bill or amendment can be introduced or moved in the Provincial Legislature which repeals, amends or is repugnant to any Governor's Act or Ordinance promulgated in his discretion by the Governor; or any Act relating to any Police Force.
- (21) Under Section 111: The suspension of subsection (1) prohibiting discrimination against any British subject domiciled in the United Kingdom, in the event of the Governor's certifying, by public notification, that, for the prevention of any grave menace of the peace or tranquillity of any part of the Province, or for the purpose of combating crimes of violence intended to overthrow the Government, it is expedient that the operation of Subsection (1) of Section 111 should be wholly or partially suspended.
- (22) Under Section 119: No Bill or amendment which prescribes professional or technical qualifications, or imposes any disability, restriction or condition in regard to the practising of any profession or



carrying on any occupation, trade or business, or the holding of any office in British India, shall be introduced or moved in the provincial legislature without the previous sanction of the Governor, and the sanction of the Governor for such introduction or moving is given in his discretion.

- (23) Under Section 123: To carry out the directions of the Governor-General in relation to defence, external affairs, or ecclesiastical affairs.
- (24) Under Section 226: No Bill or Amendment could be introduced granting a High Court Original Jurisdiction regarding the collection of revenue according to the usage and practice of the country, without the previous sanction of the Governor granted in his discretion.
- (25) Under Section 242: As regards the application of the Sections concerning the recruitment and conditions of the Service, so far as the High Court in the Province is concerned, the Governor may in his discretion direct that no person not already attached to the Court shall be appointed to any office connected with the Court, save after consultation with the Provincial Public Service Commission.
- (26) Under Section 265: The appointment of the Chairman and other members of the Provincial Public Service Commission, the regulations regarding the number of members of the Commission, their tenure of office, and conditions of service; as also provision regarding their staff.
- (27) Under Section 266: To make regulations—general or particular—making it unnecessary to consult with the Public Service Commission in making certain appointments.
- (28) Under Section 267: No Bill or Amendment for the purpose of granting additional functions to be

exercised by the Provincial Public Service Commission should be introduced or moved, without the previous sanction of the Governor to be granted in his discretion.

- (29) Under Section 270: No civil or criminal proceedings can be instituted against any person in respect of any act done as a servant of the Crown in the Province except with the consent of the Governor of the Province, to be granted in his discretion.
- (30) Under Section 271: No Bill or Amendment to abolish or restrict the protection accorded to certain servants of the Crown in India, by Section 197 of the Indian Code of Criminal Procedure, or by Sections 80-82 of the Indian Code of Civil Procedure, shall be introduced or moved in the Provincial Legislature without the previous sanction of the Governor in his discretion.
- (31) Under Section 305: The appointment, salaries, allowances, office accommodation and other facilities for his Secretarial staff.
- (32) Under Section 308: As regards certain permissible amendments to the Government of India Act, 1935, the effect of the proposed amendments upon the interests of any particular minorities in the Province, must be reported upon to the Secretary of State by the Governor acting in his discretion.

### **Critique of the Governor's Discretionary Powers**

Taken collectively, the effect of all these powers and functions, to be exercised by the Governor in his discretion, is that: substantially the most important part of the executive work is removed from the sphere of the Governor's Constitutional Advisers. Even as regards the legislative work, effective powers of initiative and control are reserved to the Governor, in addition to the numerous

safeguards contained in the right to recommend Bills, to reserve them when passed for consideration by the Governor-General, or by the King Emperor. From the moment of its being summoned to its dissolution, the Governor dominates the Legislature by his powers of initiation, direction, and regulating procedure. No act of the Legislature is complete without the Governor's assent; but no Governor's Act needs the concurrence of the Legislature, to be binding.

The Governor is thus not merely the ornamental chief of the Government; he is also its effective controlling and dominating head. The Ministers are his nominees, to be called into meeting when he chooses, to deliberate under rules made by him, and to administer departments assigned to them by the Governor.

The Ministerial subordinates and departmental secretaries are entitled to direct access to the real head of all departments of the Government, to whom they must supply all information required by the Governor; while the latter is not bound to disclose the information, or even the sources of his information, in certain subjects to his Ministers.<sup>1</sup> The officers working under the Ministers are under no disciplinary subordination to the Ministers; and in the event of any disciplinary action by a Minister, are

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1 Says the Joint Select Committee of Parliament: (Para 95, page 53 of the Report).

"We, therefore recommend that the Instrument of Instructions of the Governors should specifically require them to give directions that no records relating to intelligence affecting terrorism, should be disclosed to anyone other than such persons within the Provincial Police Force as the Inspector General may direct, or such other public officers outside that Force, as the Governor may direct. We further recommend that the Constitution Act should contain provisions giving legal sanction for directions to this effect in the Instrument of Instructions."

entitled to appeal to the Governor. If under these conditions, the new Constitution claims to provide a real measure of self-government to the people of the Province, they would need a highpower microscope to discover it when they come to work the Constitution.

### **Powers and Functions of the Governor to be exercised in his Individual Judgment**

In contrast with these, there are relatively fewer sections under which the Governor is empowered to act in the exercise of his individual judgment; that is to say, after consulting his Ministers, without necessarily being bound by their advice.

The most important of these relate to the so-called *special responsibilities* of the Governor. These are laid out in *Section 52* :

(1) In the exercise of his functions the Governor shall have the following special responsibilities, that is to say :

- (a) the prevention of any grave menace to the peace or tranquillity of the Province or any part thereof;
- (b) the safeguarding of the legitimate interests of minorities;
- (c) the securing to, and to the dependants of, persons who are or have been members of the public services, of any rights provided or preserved for them by or under this Act, and the safeguarding of their legitimate interests;
- (d) the securing in the sphere of executive action of the purposes which the provisions of Chapter III of Part V of this Act are designed to secure in relation to legislation;
- (e) the securing of the peace and good government of areas which by or under the provisions of this Part of this Act are declared to be partially excluded areas;

- (f) the protection of the rights of any Indian State and the rights and dignity of the Ruler thereof; and
- (g) the securing of the execution of orders or directions lawfully issued to him under Part VI of this Act by the Governor-General in his discretion.

(2) The Governor of the Central Provinces and Berar shall also have the special responsibility of securing that a reasonable share of the revenues of the Province is expended in or for the benefit of Berar, the Governor of any Province which includes an excluded area shall also have the special responsibility of securing that the due discharge of his functions in respect of excluded areas is not prejudiced or impeded by any course of action taken with respect to any other matter, any Governor who is discharging any functions as agent for the Governor-General shall also have the special responsibility of securing that the due discharge of those functions is not prejudiced or impeded by any course of action taken with respect to any other matter, and the Governor of Sind shall also have the special responsibility of securing the proper administration of the Lloyd Barrage and Canals Scheme.

(3) If and in so far as any special responsibility of the Governor is involved, he shall, in the exercise of his functions, exercise his individual judgment as to the action to be taken.

We shall make some brief comments on the doctrine of special responsibilities later on.

Apart from these special responsibilities, the Governor exercises his individual judgment:

(1) Under Section 55, in the appointment and dismissal of the Advocate General, as also in regard to the determination of his remuneration;<sup>1</sup>

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1. Cp. ante p. 78.

(2) Under Section 56: Where it is proposed that the Governor of a Province should, by virtue of any powers vested in him, make or amend or approve the making or amendment of any rules, regulations or orders relating to any police force, whether civil or military, he must exercise his individual judgment with respect to the proposal, unless it appears to him that the proposal does not relate to or affect the organization or discipline of that force;

(3) Under Section 68 (2): In declaring vacant the seat in the Provincial Legislature of any person, who has been elected member both of the Federal Legislature and of a Provincial Legislature, at the expiration of such period as may be specified in the rules made by the Governor in his individual judgment.

(4) Under Section 88 (1): In promulgating Ordinances, if at any time when the Legislature of a Province is not in session the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action: Provided that the Governor must exercise his individual judgment as respects the promulgation of any ordinance under this section, if a Bill containing the same provisions would under this Act have required his or the Governor General's previous sanction to its introduction into the Legislature.

(5) Section 119 (3): All regulations made under the provisions of any Federal or Provincial law, which prescribe the professional or technical qualifications requisite for any purpose in British India, or impose by reference to any professional or technical qualification, any disability, liability, restriction or condition in regard to the practising of any profession the

carrying on of any occupation, trade or business, or the holding of any office in British India, must, not less than four months before they are expressed to come into operation, be published in such manner as may be required by general or special directions of the Governor-General, or as the case may be, the Governor. If within two months from the date of the publication complaint is made to the Governor-General or, as the case may be, the Governor, that the regulations or any of them will operate unfairly as against any class of persons affected thereby, the Governor-General or Governor, if he is of opinion that the complaint is well founded, may at any time before the regulations are expressed to come into operation, by public notification, disallow the regulations or any of them.

(6) Under section 151 (1): Rules may be made by the Governor-General and by the Governor of a Province for the purpose of securing that all moneys received on account of the revenues of the Federation, or of the Province, as the case may be, shall, with such exceptions, if any, as may be specified in the rules, be paid into the public account of the Federation or of the Province, and the rules so made may prescribe, or authorise some person to prescribe the procedure to be followed in respect of the payment of the moneys therefrom, the custody of moneys therein, and any other matters connected with or ancillary to the matters aforesaid.

(7) Under Section 228 (1): The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, and the salaries and allowances of the judges of the court, shall be charged upon the revenues



of the Province, and any fees or other moneys taken by the Court shall form part of those revenues.

The Governor must exercise his individual judgment as to the amount to be included in respect of such expenses as aforesaid in any estimates of expenditure laid by him before the Legislature.

(8) Under Section 246 (2) : Appointments and postings to the said reserved posts must in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.

(9) Under Section 247 (2) : Any promotion of any person appointed to a Civil Service or a civil post by the Secretary of State, or any order relating to leave of not less than three months of any such person, or any order suspending any such person from office, shall, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(10) *Ibid* (3) : If any such person is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor exercising his individual judgment.

(11) Under Section 248 (2) : No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments, or rights in respect of pension, or decides adversely to him the subject matter of any memorial, shall be made except, if he is serving in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment.



(12) Under Section 258 (1) : No civil post which, immediately before the commencement of Part III of this Act, was a post in or required to be held by some member of, a Central Service Class I, or II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished except,—in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(13) *Ibid* (2) No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a person appointed before the coming into operation of this Part of this Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial Service, and no order upon a memorial submitted by any such person, shall be made except,—in the case of a person who is serving or has served in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(14) Under Section 262 (2) : The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified in the declaration. The same applies in essence to the temporary employment for any purpose of a non-British subject.

Provided that if it appears to the Governor that it is impracticable to obtain in time the concurrence of the Governor-General, he may promulgate an ordinance without the concurrence of the Governor-General but in that

case the Governor-General in his discretion may direct the Governor to withdraw the ordinance and the ordinance shall be withdrawn accordingly.

(15) Under Section 271 (3): Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs ordered to be paid by him, shall, if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on revenues of the Province.

(16) Under Section 300 (1) : The executive authority of a Province shall not be exercised, save on an order of the Governor, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect of land or land revenue, being a grant or confirmation made before the first day of January, one thousand eight hundred and seventy, or made on or after that date for services rendered.

### **The Effect of Special Responsibilities and Discretionary Powers upon the Constitutional Position of the Governor**

The doctrine of Special Responsibilities has been evolved to meet the special circumstances of India, under British Imperialist domination. Given the peculiar structure of the Provincial Legislatures, as also the existence of Communal fissures, it has been thought necessary, at least in the transitional stage, to give special powers to the Governor, in order to hold the scales

even between the various communities, as also between the several interests that make up an Indian Province.

This justification is, however, apart from that ideal of Constitutional evolution, which consists in establishing the supremacy of the Legislature over the Executive, which is achieved, in practice, by making the Ministers responsible for their actions and policies to the Legislature. The responsibility is enforced by the Ministers being removable by a vote of 'no confidence' in the Legislature, even though they are not appointed directly by the Legislature.

There may, indeed, be a nominal head of the Executive as well as of the Legislature, like the King in England. In theory, at least, the Governor in an Indian Province is the representative of the King in England; and therefore acting as the King in England would act in regard to the Government of the United Kingdom. But the presence of these special powers conferred upon the Governor, in which he need not consult his Ministers; or, having consulted them, need not be bound by their advice, militates gravely against the development of that constitutional convention, which would make the Governor a truly constitutional executive head, with no activity apart from that advised by his responsible Minister.

It is, accordingly, not too much to read, in these powers granted to the Governor, a deliberate distrust of the growth of Constitutionalism on the English pattern in India. So long as the Governor continues to enjoy these powers, and so long as these powers are not merely nominal, but are likely to be actively employed in the daily administration of the Province, it is impossible to believe that, in the near future, the Governor would be-

come in all respects a true Representative of the English King in India, and allow the Government of the Province to be carried on in strict accordance with constitutional usage and ideals, as prevalent in England.

### Critique of the Special Responsibilities

Even if we take those powers of the Governor which he is to exercise in his individual judgment, and which relate, for the more important part, to the so-called Special Responsibilities charged upon him by the Act, we find that the nature of these Responsibilities is so vague as to make it unlikely to keep them within any specific limits. For instance, there is no definition given of what should be called Minorities, whose legitimate interests it is supposed to safeguard as his own special responsibility<sup>1</sup>. Nor is there, similarly, any clear definition of what is meant by these *legitimate interests*. But the Minorities which are today understood to demand special attention from the Executive Government are on social or Communal lines, *e. g.*, the so-called Depressed Classes within the Hindu fold. But the line of division which keeps, at the present moment, the several communities of India apart from, and perhaps hostile to, one another, is unnatural, or at least artificial. Under the conditions of modern economic development, they are likely to become obsolete very soon. If these lines disappear or weaken, or if any such lines like those in regard to the Non-Brahmins, Depressed Classes or the Untouchables, within the Hindu fold, become coincident with the economic lines of social stratification, the Political Parties of the future may, quite possibly, wear a different aspect from that at present regarded as the most prominent. The Landlords,

<sup>1</sup> Cp. however, the Instrument of Instructions given in the Appendix to this Chapter.

for instance, can always claim to be a Minority, whose legitimate interests—such as those involved in the maintenance of the Permanent Settlement,—the Governor may be called upon to treat as a Special Responsibility; and so interfere in the constitutional carrying out of a social reform, which is overdue by at least half a century. In the course of transition from the present day artificial lines of communal division to the more real lines of economic difference, there is every likelihood of reforms being undertaken in the actual system of government, which may be opposed by groups that tend progressively to become Minorities. Their opposition may, quite plausibly, wear a communal aspect, *e.g.*, the Muslim opposition to the Age of Consent Legislation. The spirit of the clause in the Lucknow Pact, already quoted, which requires a  $\frac{3}{4}$  majority of the Members of a community in a Legislature to discuss any measure alleged to affect a community as such, also points in the same direction. If, however, the Governor is entitled, by special provisions of the law, to devote particular attention to the “legitimate interests of Minorities”; and if no definition is provided as to what constitutes such legitimate interests, or how many Minorities are to be thus specially protected, there is every likelihood of the danger that, on the pretext of protecting the legitimate interests of Minorities, the Governor’s Special Responsibility may be exercised, in his individual judgment, in order to obstruct social reforms or economic reconstruction.

The answer given to these arguments by the Authors of the Joint Select Committee of Parliament on this Act, when it was in Bill form, is neither convincing, nor does it remove the anxiety created by such provisions in the Act.

Says the Committee : (Para 79)

“We doubt if it would be possible to define ‘legiti-

mate interests' any more precisely. The obvious intention is to secure some means by which Minorities can be reasonably assured of fair treatment, at the hands of majorities, and 'legitimate interest' seems to us a very suitable and reasonable formula. Nor do we think that any good purpose would be served by attempting to give a legal definition of 'minorities', the only effect of which would be to limit the protection which the Governor's special responsibility is intended to afford. No doubt it will be the five or six well recognised and more important minorities, in whose interest the Governor's powers will usually be invoked; but there are certainly other well-defined sections of the population who may from time to time require protection; and we can see no justification for defining the expression for the purpose of excluding them. We need hardly say that we have not in mind a minority in the political or parliamentary sense, and no reasonable person would, we think, ever so construe the word. Nevertheless, to prevent misunderstanding, we recommend that the Instrument of Instructions should make this plain, and further that this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform, merely because it is resisted by a group of persons who might claim to be regarded as a minority".

The same thing may be said with regard to the very first special responsibility, namely, the prevention of any grave menace to the peace or tranquillity of the province. What is the nature of the menace against which this responsibility is intended to be exercised? The experience of the last twenty years in India shows that the present Government is inclined to look upon any agitation for the accomplishment of self-government by the Indian people themselves as a 'subversive' activity, and, as such, a menace to the peace and tranquillity of the government established by law in this country. One

might agree that crimes of violence, deliberately intended to terrorise Government or Public Servants into adopting a given policy, may be regarded as a menace to the peace or tranquillity of the country, though the ardent advocates of the Indian emancipation may well urge, in vindication of his own attitude, that even peace or tranquillity of a country can be purchased at too great a cost to the *morale* of a people in the continued subjugation of one people to another. But when history records the extension of the doctrine of special powers necessary to defeat "subversive activities", even when they are admittedly non-violent, and consist in the passive persuasion of the citizens to a particular line of action, it is impossible not to dread the infinite possibilities, in practice, of such Special Responsibilities being exercised with a view to stamp out the least ember of self-respect among the people, or their desire for political self-expression.

The Joint Select Committee hold that :

"Terrorism, subversive movements and crimes of violence are no doubt among the graver menaces to the peace or tranquillity of the Province. But they do not by any means exhaust the cases in which such a menace may occur, and we can see no logical reason for the distinction which the Joint Memorandum seeks to draw." <sup>1</sup>

Not only do these Special Responsibilities entrusted to the Governor suffer from vagueness or lack of clear definition; they are calculated in practice to subvert all discipline in the administrative services of the country, and to demoralise the Responsible Government of the Province. The Ministers would not feel any sense of responsibility in tendering their advice on questions in

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1 ( op. cit. loc cit.)



which they know that the Governor is not bound to follow their advice. They would, therefore, naturally be either indifferent, or reckless. Moreover, the fact that in several cases the subordinates are entitled by law to appeal to the Governor, or required not to communicate information to their official chiefs, namely the Ministers, is sufficient to undo or weaken the bonds of official discipline, which are indispensable in the proper government of the country. It is universally admitted that the strength of the government in Britain, notwithstanding the changing personnel of the Ministry from time to time, depends upon the absolute loyalty of the Permanent Civil Service to their political chiefs, whoever they may be, for the time being. But it is equally true that, in India, members of the Permanent Public Service have made no secret of their hostility to the evolution of constitutionalism; and, consequently, it is not too much to assume that, for years to come, high-placed public officers, especially of non-Indian birth, may be unwilling to submit themselves in loyal co-operation with their official chiefs. It is equally to be feared that when such cases of tacit refusal to collaborate with the Ministers become rank insubordination, and Ministers propose to punish them accordingly, these public servants would take shelter under the Special Responsibility of the Governor in their behalf. This does not bode well for the efficiency or the success of responsible Ministers in the provincial governments of India.

Even the constitution of the Ministry itself is a matter within the sole discretion of the Governor. He is to be instructed by his Instrument of Instructions to see to it that important Minorities are duly represented in composition of the Ministry.<sup>1</sup> Members of Minorities

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1 Vide Appendix.



Communities may, no doubt, be found in a political party commanding the absolute majority of votes in particular legislatures. If so, the letter of the law would be fulfilled so far as the Governor's special responsibility in this behalf is concerned. But even then the fact that the Governor alone in his discretion is to appoint the Ministers, to distribute the work amongst them, to summon them to meetings, to preside at their deliberations, to obtain information, if necessary, over the head of the Ministers in particular matters, from their official subordinates, and that the Governor should be entitled not to disclose what advice he received from any individual Minister in any particular instance, are calculated to weaken if not prevent altogether the sense of collective responsibility among the Ministers themselves, which it must be the object of true constitutionalism to develop.

Taking all these facts together, and bearing in mind that the Governor is independent of the Legislature as well as of his Ministry; that he has considerable law-making and financial powers,<sup>1</sup> we cannot but feel that the actual position of the Governor in the administration of the Province, will be overwhelmingly important, if not dominating. In these most important points, the Governor has special powers of his own, in that his previous consent is necessary to the introduction of certain kinds of Bills in the legislature, and that he is entitled to recommend certain other classes of bills; that he is entitled to assent to the Bills passed by the local legislature, as also to reserve any bill so passed for the significance of the pleasure of the Governor-General or of the King Emperor. He is also entitled to

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1 We shall consider more in detail the ordinary legislative powers of the Governor, as well as his powers in matters of Finance, in a later Chapter.

pass Ordinances and certain Governors' Acts, in addition to his right to suspend the whole Constitution, when a situation arises under which, in his opinion, the administration of the province cannot be carried on in accordance with the provisions of the Act of 1935.

As regards the financial position, the Governor is entitled to see to it that the expenditure necessary for the conduct of administration, particularly in these matters in which he has, under the law, special responsibilities, is duly provided for.

In fine, the real position of the Governor is admirably summed up in the following extract from the Report of the Joint Parliamentary Committee that considered the Constitution in Bill form :

"It is clear that the successful working of responsible Government in the Provinces will be greatly influenced by the character and experience of the Provincial Governors. We concur with everything which has been said by the Statutory Commission on the part which the Governors have played in the working of the reforms of 1919, and we do not think that the part which they will play in the future will be any less important or valuable."

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## Appendix I to Chapter IV.

### Instrument of Instructions to the Governors

WHEREAS by Letters Patent bearing date the  
day of 1937 We have made  
permanent provision for the Office of Governor of

AND WHEREAS by those Letters Patent and by the  
Act of Parliament passed on the second day of August,  
nineteen hundred and thirty-five and entitled the Govern-  
ment of India Act, 1935 (hereinafter called "the Act"),  
certain powers, functions and authority for the govern-  
ment of the province of are declared to  
be vested in the Governor as Our Representative :

AND WHEREAS, without prejudice to the provision  
in the Act that in certain regards therein specified the  
Governor shall act according to instructions received from  
time to time from Our Governor-General, and to the duty  
of Our Governor to give effect to instructions so received,  
We are minded to make general provision regarding the  
due manner in which Our said Governor shall execute all  
things which, according to the Act and the said Letters  
Patent, belong to his Office, and to the trust which We  
have reposed in him :

AND WHEREAS a draft of these Instructions has been  
laid before Parliament in accordance with the provisions  
of sub-section (1) of section fifty-three of the Act and an  
Address has been presented to Us by both Houses of  
Parliament praying that instructions may be issued in  
the terms of these Instructions :

NOW THEREFORE We do by these Our Instructions  
under Our Sign Manual and Signet declare Our pleasure  
to be as follows :—

#### A.—INTRODUCTORY.

I. Under these Our Instructions, unless the context  
otherwise require, the term "Governor" shall include

every person for the time being acting as Governor according to the provisions of the Act.

II. Our Governor for the time being shall, with all due solemnity, cause Our Commission under Our Sign Manual appointing him to be read and published in the presence of the Chief Justice for the time being, or, in his absence, other Judge, of the High Court of the Province.

III. Our said Governor shall take the oath of allegiance and the oath for the due execution of the Office of Our Governor of \_\_\_\_\_, and for the due and impartial administration of justice in the form hereto appended, which oaths the Chief Justice for the time being, or in his absence any Judge, of the High Court, shall, and he is hereby required to, tender and administer unto him.

IV. And We do authorise and require Our Governor, by himself or by any other person to be authorised by him in that behalf, to administer to every person appointed by him to hold office as a member of the Council of Ministers the oaths of office and of secrecy hereto appended.

V. And We do further direct that every person who under these Instructions shall be required to take an oath may make an affirmation in place of an oath if he has any objection to making an oath.

VI. And whereas great prejudice may happen to Our service by the absence of Our Governor, he shall not quit India during his term of office without having first obtained leave from Us under Our Sign Manual or through one of Our Principal Secretaries of State.

B.—IN REGARD TO THE EXECUTIVE AUTHORITY  
OF THE PROVINCE.

VII. In making appointments to his Council of Ministers Our Governor shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint in consultation with the person who in his

judgment is most likely to command a stable majority in the Legislature those persons (including so far as practicable members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature. In so acting, he shall bear constantly in mind the need for fostering a sense of joint responsibility among his Ministers.

VIII. In all matters within the scope of the executive authority of the Province, save in relation to functions which he is required by or under the Act to exercise in his discretion, Our Governor shall in the exercise of the powers conferred upon him be guided by the advice of his Ministers, unless in his opinion so to be guided would be inconsistent with the fulfilment of any of the special responsibilities which are by the Act committed to him, or with the proper discharge of any of the functions which he is otherwise by or under the Act required to exercise in his individual judgment; in any of which cases Our Governor shall, notwithstanding his Minister's advice, act in exercise of the powers by or under the Act conferred upon him in such manner as to his individual judgment seems requisite for the due discharge of the responsibilities and functions aforesaid. But he shall be studious so to exercise his powers as not to enable his Ministers to rely upon his special responsibilities in order to relieve themselves of responsibilities which are properly their own.

IX. Our Governor shall interpret his special responsibility for the safeguarding of the legitimate interests of minorities as requiring him to secure, in general, that those racial or religious communities for the members of which special representation is accorded in the Legislature, and those classes of people committed to his charge who, whether on account of the smallness of their number or their primitive condition or their lack of educational or material advantages or from any other cause, cannot as yet fully rely for their welfare upon joint political action in the Legislature, shall not suffer, or have reasonable cause to fear, neglect or oppression. But he shall not regard as entitled to his protection any body of persons

by reason only that they share a view on a particular question which has not found favour with the majority.

Further, Our Governor shall interpret the said special responsibility as requiring him to secure a due proportion of appointments in Our Services to the several communities, and, so far as there may be in his Province at the date of the issue of these Our Instructions an accepted policy in this regard, he shall be guided thereby, unless he is fully satisfied that modification of that policy is essential in the interests of the communities affected or of the welfare of the public.

X. In the discharge of his special responsibility for the securing to members of the public services of any rights provided for them by or under the Act and the safeguarding of their legitimate interests, Our Governor shall be careful to safeguard the members of Our Services not only in any rights provided for them by or under the Act or any other law for the time being in force, but also against any action which, in his judgment, would be inequitable.

XI. The special responsibility of Our Governor for securing in the sphere of executive action any of the purposes which the provisions of Chapter III of Part V of the Act are designed to secure in relation to legislation shall be construed by him as requiring him to differ from his Ministers if in his individual judgment their advice would have effects of the kind which it is the purpose of the said Chapter to prevent, even though the advice so tendered to him is not in conflict with any specific provision of the Act.

XII. Our Governor shall construe his special responsibility for the protection of the rights of any Indian State as requiring him to see that no action shall be taken by his Ministers which would imperil the economic life of any State, or affect prejudicially any right of any State heretofore or hereafter recognised, whether derived from treaty, grant, usage, sufferance or otherwise, and he shall refer to Our Governor-General any questions which may arise as to the existence of any such right.

XIIA. In pursuance of an Agreement made by Us and His Exalted Highness the Nizam of Hyderabad as contemplated in Part III of the Act, Our Governor shall interpret his special responsibility for the protection of the rights of any Indian State as also requiring him in the administration of Berar to have due regard to the commercial and economic interests of the State of Hyderabad.

Further, if Our Governor is at any time of opinion that the policy hitherto in force affords to him no satisfactory guidance in the interpretation of his special responsibility for securing that a reasonable share of the revenues of his Province is expended in or for the benefit of Berar, he shall, if he deems it expedient, fortify himself with advice from a body of experienced and unbiased persons whom he may appoint for the purpose of recommending what changes in policy would be suitable and equitable.

*( The foregoing paragraph will be included in the Instrument of Instructions to the Governor of the Central Provinces and Berar only. )*

XIII. In the framing of rules for the regulation of the business of the Provincial Government Our Governor shall ensure that, amongst other provisions for the effective discharge of that business, due provision is made that the Finance Minister shall be consulted upon any proposal by any other Minister which affects the finances of the Province : and further that no reappropriation within a Grant shall be made by any Department other than the Finance Department, except in accordance with such rules as the Finance Minister may approve; and that in any case in which the Finance Minister does not concur in any such proposal the matter shall be brought for decision before the Council of Ministers. He shall further in those rules make due provision to secure that prompt attention is paid to any representation received by his Government from any minority.

XIV. Having regard to the powers conferred by the Act upon Our Secretary of State to appoint persons to Our



service if, in his opinion, circumstances arise which render it necessary for him so to do in order to secure efficiency in irrigation, Our Governor shall make it his care to see that he is kept constantly supplied with information as to the conduct of irrigation in his Province in order that he may, if need be, place this information at the disposal of Our Governor-General.

XV. In the exercise of the powers by law conferred upon him in relation to the administration of areas declared under the Act to be Excluded or Partially Excluded Areas, or to the discharge of his special responsibility for the safeguarding of the legitimate interests of minorities, Our Governor shall, if he thinks this course would enable him the better to discharge his duties to the inhabitants of those areas or to primitive sections of the population elsewhere, appoint an officer with the duty of bringing their needs to his notice and advising him regarding measures for their welfare.

XVA. Our Governor shall bear constantly in mind the danger to India as a whole of any failure to maintain peace and security on the North-West Frontier. He shall, therefore, in the exercise of the executive authority of the Province, constantly have regard to the due discharge of his functions as Agent to Our Governor-General in respect of the tribal areas situate between the frontiers of India and the North-West Frontier Province; and he shall not hesitate to exercise his special responsibility for securing that the due discharge of his functions in respect of such tribal areas is not prejudiced or impeded by any course of action taken with respect to any other matter.

*(The foregoing paragraph will be included in the Instructions to the Governor of the North-West Frontier Province only.)*

#### C.—MATTERS AFFECTING THE LEGISLATURE

XVI. In determining whether he shall in Our name give his assent to, or withhold his assent from, any Bill, Our Governor shall, without prejudice to the generality of his power to withhold his assent on any ground which



appears to him in his discretion to render such action necessary or expedient, have particular regard to the bearing of the provisions of the Bill upon any of the special responsibilities imposed upon him by the Act.

XVII. Without prejudice to the generality of his powers as to reservation of Bills, Our Governor shall not assent in Our name to, but shall reserve for the consideration of Our Governor-General, any Bill of any of the classes herein specified, that is to say :—

- (a) any Bill the provisions of which would repeal or be repugnant to the provisions of any Act of Parliament extending to British India;
- (b) any Bill which in his opinion would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by the Act designed to fill;
- (c) any Bill regarding which he feels doubt whether it does, or does not, offend against the purposes of Chapter III of Part V or section 299 of the Act;
- (d) any Bill which would alter the character of the Permanent Settlement.

And in view of the provisions in this clause of these Our Instructions, it is Our will and pleasure that if his previous sanction is required under the Act to the introduction of any Bill of the last-mentioned description, Our Governor shall not withhold that sanction to the introduction of the Bill.

XVIIA. Our Governor in declaring his assent in Our name to any Bill of the Legislature of the Central Provinces and Berar applying to Berar, or in notifying Our assent to any such Bill reserved for the signification of Our pleasure, shall state that assent to the Bill in its application to Berar has been given by virtue of assent of His Exalted Highness the Nizam to the aforesaid Agreement.

*(The foregoing paragraph will be included in the Instructions to the Governor of the Central Provinces and Berar only.)*

XVIII. It is Our will that the power vested by the Act in Our Governor to stay proceedings upon a Bill, clause or amendment in the Provincial Legislature, in the discharge of his special responsibility for the prevention of grave menace to peace and tranquillity shall not be exercised unless, in his judgment, the public discussion of the Bill, clause or amendment would itself endanger peace and tranquillity.

XIX. It is Our will and pleasure that the seats in the Legislative Council to be filled by the nomination of Our Governor shall be so apportioned as in general to redress, so far as may be, inequalities of representation which may have resulted from election, and in particular to secure representation for women and the Scheduled Castes in that Chamber.

#### D.—GENERAL

XX. And generally Our Governor shall do all that in him lies to maintain standards of good administration; to promote all measures making for moral, social and economic welfare and tending to fit all classes of the population to take their due share in the public life and government of the Province; and to secure amongst all classes and creeds co-operation, good-will and mutual respect for religious beliefs and sentiments; and he shall further have regard to this Instruction in the exercise of the powers by law conferred upon him in relation to matters whether of legislation or of executive government.

XXI. And We do hereby charge Our Governor to communicate these Our Instructions to his Ministers and to publish the same in his Province in such manner as he may think fit.

#### APPENDIX

##### FORM OF OATH OF ALLEGIANCE

I, \_\_\_\_\_, do swear that I will be faithful and bear true allegiance to His Majesty, King

George the Sixth, Emperor of India, His Heirs and Successors, according to law.

So help me God.

FORM OF OATH OF OFFICE

I, \_\_\_\_\_, do swear that I will and truly serve Our Sovereign King, George the Sixth Emperor of India, in the Office of \_\_\_\_\_

\_\_\_\_\_ , and that I will do right to all manner of people after the laws and usages of India, without fear or favour, affection or ill-will.

So help me God.

FORM OF OATH OF SECRECY FOR MINISTERS

I, \_\_\_\_\_, do swear that I will well not directly or indirectly communicate or reveal to any person or persons any matter which shall be brought under my consideration, or shall become known to me as a Minister in \_\_\_\_\_

\_\_\_\_\_, except as may be required for the due discharge of my duties as such Minister, or as may be specially permitted by Governor in the case of any matter pertaining to function to be exercised by him in his discretion.

So help me God.

CHAPTER IV  
PROVINCIAL EXECUTIVE (Contd.)

*The Ministry*

**Legal Status**

Under Section 50 of the Government of India Act, 1935.

- “(1) There shall be a council of ministers to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Act required to exercise his functions or any of them in his discretion:

Provided that nothing in this subsection shall be construed as preventing the Governor from exercising his individual judgment in any case where by or under this Act he is required so to do.

- (2) The Governor in his discretion may preside at meetings of the council of ministers.
- (3) If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or not to have acted in his discretion, or ought or ought not to have exercised his individual judgment.”

Unlike as in the British Constitution, the Cabinet of Ministers is given a legal existence and authority. The Prime Minister, however, even now continues to be unknown to the constitutional law in India;<sup>1</sup> and if one

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1. But see Appendix to the preceding Chapter containing Instructions to the Governor.

is appointed as such, or comes into being hereafter, he would owe his existence, influence and authority to the Governor. For, under Section 51:—

- “(1) The Governor's Ministers shall be chosen and summoned by him, shall be sworn as members of the Council, and shall hold office during his pleasure.
- (2) A minister who for any period of six consecutive months is not a member of the Provincial Legislature shall at the expiration of that period cease to be a minister.
- (3) The salaries of ministers shall be such as the Provincial Legislature may from time to time by Act determine, and, until the Provincial Legislature so determine, shall be determined by the Governor: Provided that the salary of a minister shall not be varied during his term of office.
- (4) The question whether any, and if so what, advice was tendered by ministers to the Governor shall not be enquired into by any court.
- (5) The functions of the Governor under this section with respect to the choosing and summoning and the dismissal of ministers, and with respect to the determination of their salaries, shall be exercised by him in his discretion.”

### **Governor and Ministers**

The Governor chooses the Ministers, summons them to office and work, and is entitled to dismiss them. They hold office during his pleasure. The only connection with the Legislature, mentioned in this section, is that a Minister must not be outside the Provincial Legislature for more than six months consecutively, on pain of ceasing to be a member by such failure. Presumably, membership of either House, in a Bicameral Legislature, would be sufficient; and there is apparently no bar to nominated members being also appointed to the Ministry.

### **Salaries of Ministers**

The salaries of the Ministers are, until settled by an Act of the Provincial Legislature, to be determined by the Governor. The tradition hitherto has been that the Ministerial salaries shall be in consonance with the general scheme of such emoluments in public service. Under the Constitution of 1919, they have been fixed at the same level as, or slightly below that, paid to executive Councillors, *i. e.*, between Rs. 3000/— and Rs. 5000/—per month. Aspirants to these posts would, accordingly, be able to say, with more than a show of justice, that the scale of salaries should not be, under the new Constitution, such as to render them contemptible in the eyes of their highpaid subordinates in the permanent Civil Service, or leave them open to temptation. The latter is a vague, but ominous measure. The former alone is sufficient to indicate that the salaries would be on a scale not substantially different from those now in vogue, *i. e.*, between Rs. 3,000/ to Rs. 5,000/- per month, at least in the more important Provinces. From the point of view of economy in administration, the new Constitution does not hold out much hope of reform.

### **Strength of the Cabinet**

There is nothing stated in the Act about the number of Ministers a Province should have; nor is it clear whether all the Ministers will receive an equal salary. Subsection (3) points to the possibility of some difference in individual salaries. The British model, if followed, will support that idea. The number of Ministers will, in all probability, follow the present tradition,—combining the Executive Councillors and the Ministers under the dyarchial regime into a consolidated ministry of the autonomous regime. There is not an insignificant risk of

the number being increased,—especially as in the Act as it stands, there is no provision for the appointment of subordinate or assistant Ministers, corresponding to Parliamentary Secretaries or Undersecretaries of State in Britain. Apparently all Ministers are to be of equal rank. Salaries would, in the event of such posts being created hereafter, have necessarily to be differentiated, but the differentiation would not mean economy.

### **Congress and Ministerial Salaries**

The resolution of the Karachi Sessions of the Indian National Congress, (1931) fixing a maximum salary of any public servant in India at Rs. 1,000/—per month, if enforced so far as the Congress members are concerned, may create a novel situation. The voluntary surrender of the excess over Rs. 1,000/—per month by the Congress Party members, if appointed Ministers in any Province, may spell a measure of economy. But this cannot be universalised so long as the act of renunciation is a voluntary measure; and the benefit of the renunciation goes to the Party Chest, not to the country as a whole. The Acts of the Provincial Legislature determining the salaries of the Ministers will,—even in Provinces where the Congress secures a majority in the Legislature,—be very likely such as to afford no real economy in this matter of the scale of ministerial salaries. And if the popular Ministers themselves do not set an example in this direction, their efforts at economy or retrenchment in the Provincial Budget through reduction in salaries would be doomed to failure, even assuming the Constitution as a whole would permit such changes.

### **Appointment and functioning of Ministers**

The appointment of Ministers is left, as already noted, to the Governor by law. There is nothing in the law to

suggest that he must choose his Ministers in any particular manner, though the Instrument of Instructions to the Governor may,—and does,<sup>1</sup>—lay down certain lines according to which the Governor must select his Ministers. But the Instrument of Instructions, though issued under the authority of the Act, is not a constitutional document in the sense that the Act itself, including all its Schedules, is. Presumably, it cannot be taken to a Court of Law for interpretation, nor can any constitutional issue be settled by reference to it in a proper tribunal. It is a Prerogative act of the King, and the King's representative is responsible to the British Sovereign alone for any violation of the terms of that Instrument.

### **Instructions to Governor for forming Ministries**

The Instrument may require the Governor to select His Ministers from among that party in the Local Legislature, which commands a majority of the votes in that body for the time being, so, however, that all important Minorities in the Legislature should be represented in the Ministry. If the Party composition of the Legislature is such, that in the Majority Party there is no member of a Minority community, the Governor would be entitled

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"53.—(1) The Secretary of State shall lay before Parliament the draft of any Instructions (including any Instructions amending or revoking Instructions previously issued) which it is proposed to recommend His Majesty to issue to the Governor of a Province, and no further proceedings shall be taken in relation thereto except in pursuance of an address presented to His Majesty by both Houses of Parliament praying that the Instructions may be issued.

(2) The validity of anything done by the Governor of a Province shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him".

See also Appendix to this Chapter for Instructions to Governors".



ed by law to force upon his Cabinet a colleague from a Minority community who may not share their political faith and ideals. This is not calculated to add to the homogeneity, solidarity, or a sense of collective responsibility among the Ministers.

It may, indeed, be that the provincial politicians would themselves see to it that in their party ranks are some members of Minority communities, whom the Act requires, by a special responsibility of the Governor, to be included in the Cabinet; or the Instrument of Instructions directs the Governor to do so. But such choice of Ministers—on grounds of communal complexion, rather than on the strength of the political capacity,—is apt to undermine completely the spirit of true constitutionalism in the Provincial administration.

### Collective Responsibility

The wording of subsection (4) of Section 51, again, does not at all show that the Ministers will act collectively in offering advice to the Governor, on such matters in which by law they are entitled to offer advice to the Governor, and the latter is bound to follow that advice. The rules of business of the Government,<sup>1</sup> made by the

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1. 59.—(1) All executive action of the Government of a Province shall be expressed to be taken in the name of the Governor.

(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

(3) The Governor shall make rules for the more convenient transaction of the business of the Provincial Government, and for the allocation among ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Act required to act in his discretion.

(Continued on page 126)

Governor in his discretion, may provide for individual consultation between the Ministers and the Governor. Again certain minor matters of Government may be left to be disposed of by the Minister concerned, either on his own authority, or with the concurrence of the Governor, as seems to be the case under the Constitution of 1919. In such cases, the tradition and policy of individual advice to the Governor will be continued; and to that extent the development of a spirit of collective responsibility and Ministerial solidarity will be impeded.

The fact, moreover, that the Governor is entitled to preside at Cabinet meetings,<sup>1</sup> coupled with the further fact that he is, by law, entitled to demand and obtain all the information relating to every subject in any department of his Government from the Ministers or from the Secretaries, will suffice to make the Governor the real head of the Government, rather than his Prime Minister, if any.

#### **Probabilities of the political complexion of the first Ministries in the leading Provinces**

What will be the political complexion of the first Ministries in the Governors' Provinces under the new

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(Continued from page 125)

(4) The rules shall include provisions requiring ministers and secretaries to Government to transmit to the Governor all such information with respect to the business of the Provincial Government as may be specified in the rules, or as the Governor may otherwise require to be so transmitted, and in particular requiring a minister to bring to the notice of the Governor, and the appropriate secretary to bring to the notice of the minister concerned and of the Governor, any matter under consideration by him which involves, or appears to him likely to involve, any special responsibility of the Governor.

(5) In the discharge of his functions under subsections 2, 3 and 4 of this section, the Governor shall act in his discretion after consultation with his ministers.

1. Cp. Section 50 (2).

Constitution? This is necessarily a matter of speculation at the moment of writing. But an analysis of the composition of the Legislature in the important Provinces, coupled with the past experience of the composition of the Legislatures under the Montford Constitution, might supply some data for making a forecast.

The following Table represents the composition of the Legislatures under the Act of 1935 in the Governor's Provinces, Legislative Assembly as well as the Legislative including Council wherever the Legislature is bicameral.

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TABLE OF SEATS  
Provincial Legislative Councils.

1. Province	2. Total Seats.	3. General Seats	4. Muham- madan Seats.	5. Euro- pean Seats.	6. Indian Christian Seats.	7. Seats to be filled by Legislative Assembly.	8. Seats to be filled by Governor.
Madras	Not less than 54 Not more than 56	35	7	1	3	—	Not less than 8. Not more than 10.
Bombay	Not less than 29 Not more than 30	20	5	1	—	—	Not less than 3. Not more than 4.
Bengal	Not less than 63 Not more than 65	10	17	3	—	27	Not less than 6. Not more than 8.
United Provinces	Not less than 58 Not more than 60	34	17	1	—	—	Not less than 6. Not more than 8.
Bihar	Not less than 29 Not more than 30	9	4	1	—	12	Not less than 3. Not more than 4.
Assam	Not less than 21 Not more than 22	—	6	2	—	—	Not less than 3. Not more than 4.

TABLE OF SEATS.  
Provincial Legislative Assemblies.

1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12	13	14.	15	16	17	18	19
Province.	Total Seats.	Total of General Seats	General Seats reserved for Scheduled Castes.	Seats for representatives of backward areas and tribes.	Muslim Seats.	Muslim Seats.	Anglo-Indian Seats.	European Seats.	Indian Christian Seats.	Seats for representatives of commerce, industry, mining and planting.	Landholders Seats.	University Seats.	Seats for representatives of labour.	General	Sikh	Muslim	Anglo Indian	Indian Christian
Madras	215	146	30	1	—	28	2	3	8	6	6	1	6	6	—	—	—	1
Bombay	175	114	15	1	—	29	2	3	3	7	2	1	7	5	—	1	—	—
Bengal	250	78	30	—	—	117	3	11	2	19	5	2	3	2	2	2	1	—
United Provinces	228	140	20	—	—	64	1	1	2	3	6	1	3	4	—	2	—	—
Punjab	175	42	8	7	—	31	4	1	1	1	5	1	3	1	1	2	—	—
Bihar	152	86	15	1	—	39	1	2	1	4	4	1	3	3	—	—	—	—
Central Provinces and Berar	112	84	20	—	—	14	1	1	—	2	3	1	2	3	—	—	—	—
Assam	108	47	7	9	—	34	—	—	1	11	—	—	4	1	—	—	—	—
North-West Frontier Province	50	9	—	—	3	36	—	—	—	—	2	—	—	—	—	—	—	—
Orissa	60	44	6	5	—	4	—	—	1	1	2	2	1	2	—	—	—	—
Sind	60	18	—	—	—	33	—	2	—	2	2	—	1	1	—	1	—	—

In Bombay seven of the general seats shall be reserved for Marathas.

In the Punjab one of the Landholders seats shall be a seat to be filled by a Tumandar.

In Assam and Orissa the seats reserved for women shall be non-communal seats.

Assuming, that the Congress strength will lie mainly in the General Constituencies, the following probability has the weight of past experience in its favour in the several Provinces.

In Madras, the General seats in the Lower House aggregate 152 out of a total of 215, including 6 seats for women. Out of these, about 140 may be expected as Congress seats, looking to the record of that Province in the last Assembly elections. The chances further are that the 6 Labour seats, and at least 4 Commerce and Industry &c. seats will be captured by the Congress, or those having full Congress sympathy and voting on the Congress side. This would make a total Congress strength of 150, including Scheduled Castes. Even if we regard all Communal seats,—Mussulman, Indian-Christian, Anglo-Indian, and European to be captured by non-Congress or anti-Congress elements, as also the seats (6) reserved for landholders, there is bound to be an absolute Congress majority in the Madras Assembly, varying from 85 to 65 at the lowest,—i. e., allowing for a further reduction of the Congress strength in the Scheduled Castes seats of 10. The composition of the Legislative Council will not materially affect this balance of Parties in the Madras Legislature, and so we may assume that the Legislature would be overwhelmingly Congress-minded, if not actually owing Congress allegiance.

In Bombay, out of a Total of 175 seats, 119 are general seats, including 5 women. Out of these, assuming that the Scheduled Caste representatives would be Congress-minded only to the extent of one-fourth of the seats reserved for them; and that some Parsis of non-Congress sympathies might find their way into the Assembly through this open door, the total Congress strength from the General

electorate may be put at about 100. Counting the 7 Labour seats, and 3 out of the 7 Commerce and Industry seats as likely Congress captures, it is not unlikely that the Congress may command in Bombay a total of 110, or a majority of 35 to 45, assuming that all Communal and special seats would go to non-Congress or anti-Congress elements. The Legislative Council of from 29 to 30 will, in this Province also, not materially affect the strength of Parties in the aggregate Legislature.

In Bengal, the General seats are only 80 in a House of 250, including 2 women. The Congress may capture all these 80 seats, and add to them 6 out of the 8 Labour seats, 2 out of the 5 Landholders', and 5 out of the 19 Commerce &c. seats. Perhaps 1 of the 2 University Seats may also go to the Congress. Even so the maximum Congress strength (about 95) will not exceed 100, and may be considerably less. This assumes, of course, that all Muslim and other communally elected Legislators would be non-Congress, or anti-Congress,—not an absolutely valid assumption. But unless the Congress secures at least 40 out of the total Communal seats in that Province,—and loses not a single one of the General and other seats shown above as Congress probabilities, there can be no Congress majority in the Bengal Legislature. The Legislative Council also is a fairly large body of from 63 to 65 members, in which the Governor's nominees may aggregate as many as 8. There is no reasonable prospect of the Congress securing even a bare majority in the Bengal Assembly or the Legislature collectively,—though a Coalition Government with the Mussulman members sympathetic to the Congress is not beyond the bounds of possibility.

In the United Provinces, out of a total of 228 seats in the Assembly, 144 are General, including 4 women.

These may be regarded as Congress seats, at least to the extent of 120,—allowing for half the Scheduled Castes seats (10) and other 10-14 seats to be captured by non-Congress or anti-Congress elements. Against this, we may reasonably assume the 3 Labour seats, 1 University seat, 1 Commerce, and 10 at least out of the 64 Muslim seats to be likely to fall to the Congress share. Altogether, then, a clear majority of about 40 in a House of 228 is not unlikely at all in the United Provinces; and it may in actual fact be much larger. The Legislative Council of at most 60 may reduce the Congress strength in the aggregate Legislature; but it will not wholly destroy the majority even in a combined sitting.

In the Punjab, the case is different. In a House of 175, there are only 43 general seats, including 1 woman. Assuming that the Sikhs (32) will be largely of Congress sympathy, even if not actually owing allegiance to the Congress, the total Congress strength cannot much exceed 75, allowing for the capture of the Labour seats, and the losses in the General or Sikh seats. Of the 86 Muslim seats (including 2 women), it is unlikely that the Congress captures more than 10, if even so many. Even then the Congress-minded members will not command a majority in the Punjab Assembly. There is no Second Chamber in that Province luckily; and so no allowance need be made on that account.

Bihar, shows a better prospect for the Congress. Of the 152 seats in the Assembly, the General seats are 89, including 3 women. These may almost all be Congress captures. Let us however, assume only 80 to be Congress captures, to which 3 Labour seats and 1 University, 1 Commerce, and even 1 Landholders' may safely be added. Out of the 39 Mussulman seats, as many as 20 may in



that Province fall to the Congress share. There may thus be a comfortable majority of 50 or thereabout, in the Bihar Assembly for the Congress; while the Legislative Council of 30 at most will not in any way disturb that majority.

The same condition is likely to be repeated in the Central Provinces. The total strength of the Assembly is 112, and 87, including 3 women, are General seats. Even if only 80 of these are captured by the Congress,—a highly probable eventuality,—there would be a majority of about 50, if we take it that the 3 Labour seats will fall to the Congress-minded candidates. There is no Second Chamber in that Province.

### **Congress and Ministries**

Of the remaining Provinces, Assam and Orissa may possibly command a Congress majority; while the N. W. F. Province and Sind may be outside the Congress pale.

Thus in 7 out of the 11 Governor's Provinces, there is every likelihood of the Legislature having a Congress majority; while even in the remaining 4, the forces of Nationalism would not be negligible. Will the Congress Party assume the responsibility of office? Or will they prefer to act in Opposition, whatever their strength in the Legislature? If the latter alternative is adopted, there is a risk that the Congress-minded, though not professed Congress nominees, in the Legislature may gradually fall off. The allegiance, again, of quite a respectable proportion of Congress followers proper may be severely shaken, if the formal and final decision of the Congress is to refuse to accept Ministerial office in the Provincial Government. Many Congress men of to-

day, when elected, will, in many provinces, endeavour their utmost to persuade the Congress to assume Ministerial responsibility,—on the grounds, mainly, of keeping out undesirable elements, commanding key positions, and obstructing from within, and so rendering the Constitution as a whole unworkable and absurd. The two first considerations are, essentially, of a negative value, though not necessarily negligible on that account.

### Congress Ministers

But this process of *reductio ad absurdum* has its own dangers, in so far as the temptation of monetary gain, as well as the consciousness of power, however nominal or illusory, is bound to make such obstruction from within progressively weakening. The powers reserved to the Governor in his sole discretion,—enumerated above; and those to be exercised by the Governor in his individual judgment,—i.e. after a nominal consultation with his Ministers, but without any obligation to adopt the advice given by the Ministers or any of them,—are, in themselves, sufficient to preclude any chance of effective opposition to the Governor; and much less for any good to the Province falling to the share of the Ministers. The intangible, but by no means insignificant, consideration of the spirit of the place must also not be overlooked. Once you enter the Office-room, and take charge of the powers (?) and responsibilities attached thereto, the mind of every ordinary person would unconsciously try to work the position constructively rather than destructively, legally rather than illegally. Ministers would, therefore, unconsciously become hypnotised by their office, even when they are not flattered into forgetfulness of their pledges by their official subordinates. And if, as is likely, Governors develop an astute political sense, and yield on all small matters to their Ministers, they can easily harness to

their Imperialist engine all the influence of their Ministers no matter what their election professions, or ultimate objectives.

The Ministry collectively is appointed and summoned by the Governor in his discretion, and liable to be dismissed, singly or collectively, by the same authority. This, however, may be so used by an astute Governor as to neutralise the opposition or obstruction from within of Congress ministers. Many of the Congress members of the Legislature, again, may find the temptation of the salary attached to the Ministers' posts to be so considerable as to make their opposition to the Governor, even within the permissible field, but perfunctory, and only in appearance.

#### **Influence of the Permanent Services**

Even if all the members of the Ministry are equally strong-minded and well-informed; even if the Congress follows a definite determined constructive policy in the actual governance of the Province, the presence of an unshakeably entrenched Civil Service, with definitely anti-Congress sympathies in the main, and inspired by traditions of a non-responsible, non-removeable Bureaucracy, will militate seriously against any practical success being attained by the Congress Party as Ministers, even if other factors do not operate against them.

There is, moreover, the reserve power vested in the Governor to override the Legislature in matters of legislation; to pass Ordinances and Acts apart from or without consultation with the Legislature,<sup>1</sup> which would rather tend to end or suspend the Constitution, the moment it becomes unacceptable to the vested interests,—both Indian and non-Indian,—than to make concessions and yield in essential particulars of general policy.

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1. cp. Sections 88, 89, 90 and 93 of the Act.

### **Financial Handicap of Congress Ministers**

Finally, there is the consideration of Finance. As shall be shown more fully hereafter, there is very little authority open to the Ministers to initiate reforms in the administration which may add to the expenditure, or which may involve drastic retrenchment.<sup>1</sup>

It seems, therefore, on a consideration of all the relevant factors, that the Congress Party in the several Provinces, accepting Ministerial responsibility, even when it commands an absolute and substantial majority in the Legislature, will, under the Constitution as it stands, invite more embarrassment, disappointment, and failure for itself, its ideals and programmes, than accomplish any real good in the government of the province, or the welfare of its people. It may, indeed, find a good and relatively safe platform to preach its gospel of National Emancipation, and prepare the people for the next stage of the struggle. By occupying this platform, it may keep out undesirable elements from strategic positions, which may be of immense importance on the day of crisis. But when all this is said in favour of accepting ministerial responsibility under the new constitution, one must also remember: (1) the incongruity of a Party, officially pledged to render the new Constitution abortive, becoming the chief midwife and nurse at the birth of the monster; (2) the handicap created by the discretionary and other extraordinary powers of the Governor; (3) the statutory privileges of the Services; and (4) the ignorance and inexperience, in many cases, of parliamentary democracy and administrative technique in the Congress Ministers themselves,—which would, individually and collectively, render such Ministries no great success from any point of view.

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1. Cp. Chapter vii.

### **Handicaps of Popular Ministers under the new Constitution<sup>1</sup>**

Ministers, under the new Constitution, may plume themselves on the theoretical position of being popular mandatories in their Province. But however completely they may possess the confidence of their compatriots, they would not be able to make the popular view prevail, in any case in which it goes counter to the settled principles of government adopted by the British rulers of the country. Apart from the restrictions, however, which, as we have seen, the innumerable discretionary powers given to the Governor may cause; apart also from the mortifying feature of the Constitution, which empowers the Governor, in several cases, to seek his Ministers' advice, without any obligation to be bound by that advice; the Ministers have their own particular handicaps, which would, in practice, materially diminish the effective power and influence they can wield in the governance of the country. (a) Their own ignorance of the routine of government,—as also the lack of experience in handling subordinates,—is a handicap that may be expected to disappear in course of time. This ignorance or inexperience is not their fault, but rather their misfortune. For, until now, Indians have never had any opportunity to rule their country in the last 80 years; and it is only real power which teaches the proper exercise of that power; real responsibility which teaches a sense of true responsibility. Even in the days of Dyarchy, either true strongwilled Nationalists, possessing the full confidence of the people, did not go to the Legislatures, and so could not take office; or, if any of these did go, they felt

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1. This section applies, it need hardly be stated, to the average politician now most prominent in the leading Parties.

themselves traitors, and so were never more than half-hearted in the Ministerial posts. Hence lack of familiarity with the mechanism of politics in many of the leading figures in the political world of India; and their consequent inability to grasp the real issues of modern world politics, must be regarded as responsible for that ignorance and inexperience which will make the greatest handicap of these persons, if and when they become Ministers.

This would, of course, be the case in regard to such Ministries as are composed of Congressmen who had, since 1919, boycotted the traditional constitutional methods of political work; and so deprived the leaders of that Party from that insight and experience of administrative needs in a large modern province, without which the most powerful Ministry, in the popular sense, would be unable to accomplish any real good. In those Provinces, however, in which the Congress Party does not command a majority in the Legislature, Ministries may be formed by coalitions with Minority Parties, which, however, will have handicaps of their own. In no Province is the Congress Party likely to be an insignificant Minority. Its vote will, therefore, be a force to be reckoned with. Its discipline and undistracted attack on the new Constitution, in the resolve to make it unworkable, will always make it the focus of all the malcontents in the Parties forming Coalition Ministries. Those Ministries will, therefore, never be stable,—if the Congress Party remains true to its resolve to wreck this Constitution by undermining it from within the Legislature. Unable to feel a sense of stability, and always anxious to placate the several discordant elements which make up the Coalition, such Ministries will, necessarily, be unable to have a definite programme to which they could consistently devote themselves; and

so, in their charge, there can be no hope of any real benefit being done to the Province by such Ministries.

### **Inferiority Complex**

(b) Apart from the strategical difficulties of non-Congress Ministries, there is a further consideration,—somewhat intangible, it is true, but nonetheless real. Psychologically, politicians in India, who have hitherto seen the salvation of the country in co-operation with British Imperialism, and who, in their inmost hearts, have dreaded or disbelieved in the fitness of the Indian people to rule themselves, are unconsciously so deferential towards their British masters or monitors; so lacking in self-confidence; so distrustful of the democratic possibilities of this country, that they would go a long way to make their policies,—such as they are,—harmonise with the fundamental interests of the dominant partner in the Empire. Further, they would mostly be people, or parties, representing vested interests, who are necessarily in a minority in a country so hopelessly poor as India, and where all avenues of profitable work are monopolised, for all practical purposes, by the foreigner within the gates. The preservation of their vested interests cannot be achieved, except with the support of the foreign power. Hence, they must needs be committed, unconsciously, perhaps, to a policy of subordinate co-operation with the British element in India,—whether in the Services, in Industry, or in Commerce. The price of British co-operation is, naturally, opposition to the legitimate ambitions of the Indian proletariat and the Indian peasantry,—if the phrase can be used for the non-land-owning agriculturists of this country. Ministries made of such elements can, therefore, hardly expect that complete popular sympathy and support, which the Nationalist elements proper are most likely to



command, even when their policy appears to be negative,—obstructionist, or destructive. For in that destruction lies the promise of a new reconstruction, which may afford a greater social justice, larger life, and better opportunities, than the present social system, supported in effect by British bayonets, can provide.

### Ministries and Parliamentary Majorities

The influence of Party sentiment would, of course, be progressively increasing, if not in the actual governance of the country, at least upon the fortunes of the Ministers. The Governor, it is true, is empowered, in his discretion, to summon the Provincial Legislature, and even to dissolve it,—not to mention the ultimate weapon of the wholesale suspension of the Constitution.<sup>1</sup> But,—apart from a total abrogation or suspension of the Constitution, which, when it takes place, will more effectively accomplish the aims of the so-called obstructionist elements in Indian politics than anything they can themselves do,—every dissolution, whether ordered by the Governor or advised by his non-Nationalist Ministers, will result in a new additional wave of Nationalism, which would leave no pretence for constitutional existence to such unrepresentative Ministries. The one clearly defined political issue in India is: whether there shall be the continued domination and exploitation of this country by British capitalism; or whether the Indian peoples' right to self-expression in the political field, shall be permitted full scope. Other issues there may and will be. But until the complete transfer of real power in the governance of the country is achieved, and Indian Nationalist consciousness satisfied, these other issues, even of social reform or

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1. Cp. Section 93.

economic reconstruction, will pale into insignificance, and fail to capture popular imagination.

Party majorities in the Provincial Legislatures backing the Ministers for the time being in office will, therefore, be fluctuating in all those provinces where the Congress Party does not command an absolute majority, but yet is sufficiently disciplined and cohesive to offer the most efficient opposition. For some time, the presence of a foreign element, coupled with the Communal distrust, may render party lines unnatural and unreal. But the first taste of real power, however limited that power in practice may be, will emphasise those abiding issues dividing the political minded citizens, which will soon shape themselves into new Parties. India may not follow entirely the Anglo-Saxon analogy of having in the State only two Parties,—the third Party, if and when it emerges gradually merging into or absorbing one of the two historic Parties in the State. But even if the French model of varying groups combining from time to time, in the life-time of one and the same Legislature, is adopted, the lines of demarcation between the groups will have to be essentially different from those which now distinguish the Independents and Liberals, the Nationalist Congressmen and the Congressmen *pucca*,—not to mention Congress Socialists. It is possible there may be Agrarian and Industrial groups, though in so far as the common respect for property, and the right to appropriate for private gain the surplus value created by human effort or ingenuity is concerned, there will be little to demarcate between the Agrarians,—representing the Landlords,—and the Industrialist representing the big Capitalist elements. The Communal Line, and even the Brahmin *vs.* Non-Brahmin distinction will, whatever its strength today in particular

Provinces, weaken in course of time, when the real cleavage between those who have and those who have not, is thrown into bold relief.

### **Political Consciousness of the Masses.**

To develop, however, keen and clear political consciousness in the mass of the Indian people, it is not enough to stress the inevitable antagonism between a foreign Imperialist and exploitive element, keeping a stranglehold on the political machine and economic power; nor is it necessary to emphasise the purely Communal line, even when it seems to coincide, at places, with economic divisions. The Hindu may, generally speaking, be a shop-keeper and money-lender; and the Muslim may, as roughly speaking, be an artisan or an agriculturist. But there are as many debtors among Hindus, even proportionately speaking, as among Muslims; and modern Industry is no absolute monopoly of either. The Hindu is, relatively speaking, perhaps richer in the aggregate, being more adaptable and more numerous. But the very fact of the larger numbers, as also of the greater adaptability to new ideas and new ways of living and working, make poverty none-the-less conspicuous or severe in the Hindu community. The real strength of Political Party sentiment will be developed only when the consciousness of India's grinding poverty deepens, and gets to be unmistakable even by the commonest intelligence. Side by side realisation must also come to the masses of the infinite possibility for betterment,—even immediate betterment,—by the use of political power, and the operation of a carefully planned National Economy, eliminating the private appropriation of Surplus Value, organising work scientifically, and distributing its product equitably, if not equally.

### Ministries and the People at Large

Under these circumstances, the first Ministries in the Provinces, under the new regime, are likely to be of the same economic class, whether they wear the Congress label, or sport some other colours. Their ability, even if they were minded to undertake economic reconstruction of a radical kind, is extremely circumscribed under the new Constitution, by the powers of the Governor, financial considerations, and the public services safeguards.

But, apart from this question of the reality of power available under the new Constitution to the chosen representatives of the people of India; apart from the ability of the Cabinet personnel in the several provinces; apart, finally, from the inherent fissures in some of the leading Provinces, like Bombay or Madras, which combine in one unit two or more distinct nationalities, between which there is smouldering a horrid flame of jealousy,—apart from all these handicaps, the new Ministries must labour under the most invisible but none-the-less potent drawback of an untutored mass, still unaware of its human rights, still unmindful of the economic possibilities of the country, and the social environment needed for their full exploitation.

The governing class, or Bourgeois Ministries,—even of Congress complexion,—likely to be formed in many Provinces under the new regime, would be receiving only that measure of popular support which is derived from the idols of the marketplace. They would dominate,—at least for the purpose of maintaining their position and power,—the educational and other machinery for publicity, so as to perpetuate respect for the existing order, and all

that it stands for in regard to social justice. The Press, for example, which has been gagged in a number of ways by the existing regime of British imperialist exploitation,—and against which all Indian parties have protested, in one shape or another, at one time or another,—will hold its position in the future, only on condition that it continues to be subservient to the new governing class, and promotes its interests, on pain of being visited with perhaps worse gags than have been used under the alien British regime. The British, violating such civil liberties, could at least be branded as unsympathetic outsiders. But when their example is followed by the Indian Ministers under the new Constitution, the chances of a true and full popular education through the Press into a correct perception of the rights and possibilities, open to the people in a truly democratic regime, would be progressively jeopardised.

### **Mission and Purpose of Political Parties**

Political Parties in India have hitherto conceived their mission and purpose in a very restricted sphere. Their contact with the people is elementary; and their influence with the masses somewhat legendary. The mass in any country,—and particularly one situated as India—is necessarily below the level needed for social progress. But its weight and momentum cannot be overlooked in a democratic community by its leaders. Political leadership in India, especially that brand which is to provide effective ministerial timber for the future, needs improvement in two respects. Its own vision, its stock of knowledge, must be widened, not only as regards the world of ideas, but also in the more mundane concerns of daily administration of a great nation. And, secondly, its perception of the dynamic energy, necessary to be supplied by the leader, also requires to be deepened. The

true leader is not merely a facile writer, a fluent speaker, an attractive figurehead. He may be all these, but must be more. He must be the prophet and the teacher,—the master who informs, the general who leads, the commander who executes the plans prepared by himself and his General Staff.

Contact with the masses must be direct and personal, no doubt. But that does not mean the complete identification with the average rut, if the country is at all to be uplifted. To be unknown and inaccessible would spell for political leaders lack of sympathy and failure to understand the people. But to seek to identify one-self entirely with the mass,—in thought and speech, in food and dress, in manners and ideals,—is particularly dangerous in a country like India where such self-abnegation may easily wear the garb of personal sanctity and spiritual superiority that may only serve, not to inspire or uplift, but to depress and repress the mass by a self-created complex of inferiority. If the Leaders confine themselves ordinarily to contacts with the more intelligent and progressive elements,—commonly found in large aggregates of population like towns or industrial and commercial centres,—depending for actual contact with the masses on occasional tours, or the modern means of communicating the spoken word to the farthest corners of the land,—the task of leadership would be achieved much more effectively for the advancement of the country.

The main contacts of the leaders would necessarily be with the immediate colleagues, associates or followers. In Parliamentary institutions,—and the Indian National Congress is itself becoming more and more an enlarged edition of the National Council,—this would mean back-

benchers, who may themselves be leaders in their own locality. So long as the exigencies of the Indian political struggle necessitated the Leaders and Followers being in common political exile, the distinction was immaterial. But when Indian politicians sense themselves to be nearer the goal of a Bourgeois capture of political power, and the possibilities of exploiting that power for personal aggrandisement become more manifest to the followers as well as to the leaders, the relations with the backbenchers would increasingly become a fine art. Followers would expect rewards for political suffering or sacrifice; and Leaders would have to find means of such rewards to a number of followers out of all keeping with the opportunities open to the leaders for offering such rewards.

#### **Indirect sources of Ministerial Influence**

In this connection it should be noted, that the task of the British Government in India was easier compared to the task of the Indian leaders, when they acquire even the shadow of power open to them under the new Constitution. While the British Government, gathering to itself the richer, more powerful, more sophisticated elements, could satisfy them by mere nominal rewards,—like titles, badges, distinctions of no intrinsic value to the giver or to the receiver,—the bulk of the followers of the Indian Leaders in the new regime would have no other value except material. Hence, the only rewards they would insist upon would be chances of further exploitation of their own countrymen. Whether it is Fiscal Protection to large scale Industry, or modern business like Insurance or Banking, or petty contracts for printing, conveyance, or advertising, the reward for political service will necessarily take a shape resulting



in some sort of exploitation of the country more than it need have been. The British, of course, did not fail to exploit, through political power. But, inasmuch as the British have acquired a greater mastery of modern Industry, a longer experience of large scale commerce, they could conceal their exploitation by bringing in the process a degree of efficiency which showed increasing surplus,—or at least made a show of increasing wealth, better wages to those Indians immediately engaged in the British enterprise,—which compensated, in a manner of speaking, for such exploitation as they achieved. The efficient manager of industry in the competitive capitalist world always manages to pay better wages than the relatively inefficient, unprogressive, unambitious. If the British exploiter of Indian economic resources managed, being more efficient, to add to the wealth of the country, even while enriching himself in a much greater measure, those who accept the foundations of Capitalist civilisation cannot complain,—except that the fruits of British exploitation were drained away from this country for ever.

The Indian politician, rewarding his political followers in his day of power and ascendancy, will have no chance to adopt the "Spoils system", as the authors of the new Act have taken good care that he should have no such temptation to lower the standard of administrative efficiency beyond the line compatible with the interests of the British "steel-frame". There are, also, no such avenues open to the Indian politician, as are available to his British confrere in power, *viz.* enriching his followers at the expense of subject peoples,—Colonial Governorships, Judgeships, or overseas Military Commands. All the opportunity that the Indian politician in

power will have to reward his followers, and to maintain their continued support in the Legislature as well as in the country, is to be found in such patronage for employment, which, under the law and the Rules made for the purpose, is in the power of the Ministers, singly or in Council; and in those trends of policy which might provide the bigger figures in the economic world with larger and more numerous opportunities for exploiting the country.

In this process, there may result deterioration, waste, inefficiency. But we cannot, for that reason, deny the the necessity of political power to correct our own backwardness as a people. Self-Government we must have, even if, for a time, it might spell some of the drawbacks outlined above. At the most we may have to resign ourselves to a stage of transition, which must be accepted as inevitable, like Purgatory in the Christian cosmology. But even this sense of resignation before an inevitable decree of fate is not absolutely needed. We can, and easily may, provide alternative means to counteract this possibility by removing the very basis of such temptation, and consequent deterioration. If the motive of private profit is eliminated, the process of exploitation will carry no exclusive personal benefit. The Surplus Value created in every instance of material production will be reserved for the community as a whole, instead of being allowed to be distributed under the stress of individual competition in such manner as the competing individuals may devise for their own benefit. The salvation of India,—the hope of any social advance and economic betterment of the masses through *Swaraj*,—political control of the government machinery in the country,—lies only in a radical reorientation in

our conception of human motives, in our ideas of social good and common needs. Party Discipline, which would otherwise often be mistaken for tyranny of the bosses, as in America; Party strategy, which would likewise be liable to be confounded with Tammany Hall methods; Party loyalties which might be another name for sycophancy or opportunism,—to which Politics has always been particularly prone,—will all stand a chance of purity and an ennobling aspect, if we could discard altogether the root evil of private profit through political power, or politicians' favouritism. The modern engine of public education and information, of shaping popular opinion even while informing it,—the Press and all its accessories of the Radio and the Screen,—will be redeemed from the besetting sin of capitalist countries,—its venality, corruption, degradation. It could be the preserver and upholder of Civil Liberties, since it would itself best benefit from the fullest prevalence of Civil Liberties. But while its owners and managers are susceptible to personal considerations of exclusive advantage, the power the Press naturally wields, in communities where Parliamentary institutions are supposed to prevail, is apt to degenerate into political blackmail for party purposes at best, or become frankly a weapon of class, if not group or individual, advantage.

### **The People and the new Constitution**

Parliamentary Democracy, of the type we are supposed to commence from 1937, associates people in the choice of their rulers only indirectly. Ministers are representatives of the people in a very indirect sense. Though their ultimate responsibility is to the people, they are primarily, immediately, or in the theory of the

law, responsible only to the Legislature, elected by the people under certain conditions, and at more or less considerable intervals of time. In India, these elections themselves make it doubtful if they would reflect correctly the real popular opinion on a given question, or at a given General Election. Even if the Elections faithfully reflect popular sentiment on a given issue, the special responsibilities imposed by law upon the Governor would make it impossible always, and in every Province, to select a Ministry itself representing faithfully the dominant sentiment in the Legislature. Under these conditions, the ideal of popular sovereignty,—of an appeal to popular choice, is no more than a name. If Ministers,—or leaders of political opinion in the country,—really wish to represent the popular sentiment in the governance of the country, they would have to bear a double responsibility; the obvious, immediate, constitutional responsibility to the Legislature and to the Governor; and the real, ultimate, political responsibility to the people they represent and profess to lead.

### **Future Role of the National Congress.**

The latter is vague, indefinite, unwritten. It depends for its very existence on the good faith of the individuals, and their own true loyalty to their constituents,—taking the latter in a wide sense coterminous with the country. The good faith of politicians, beset with so many temptations, must needs be weak or faltering, in a country where the people collectively have yet to develop consciousness of their political power, where they have yet to evolve conventions, which would keep their mandatories true to their mandate, where they have yet to devise a machinery for the popular trial of prominent politicians, judgment,

and punishment. The Indian National Congress, if it is maintained in its present role of fearless criticism of Government after the advent of full self-government in the country, may serve as a *forum populi*, where the mandatories of the popular will could be arraigned as in a High Court of Popular Justice. But that body itself runs considerable risk of becoming a pocket borough of a clique, or the registry office of certain dominant personalities. Hence if the pure flame of Parliamentary Democracy, and free self-governing Commonwealth is to be lighted in this country, the forms and symbols of Constitutionalism, as provided in the Act of 1935, must be particularly guarded against, as they constitute so many pitfalls, traps, or snares for the unwary or the inexperienced, for the weak of faith and lacking in knowledge.

The real extent, then, of the power, authority, or influence of the popular Ministers in the new Constitution, cannot be even as much as their nominal, legal powers, as described in Section 49, which says :—

- (1) The executive authority of a Province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him, but nothing in this section shall prevent the Federal or the Provincial Legislatuare from conferring functions upon subordinate authorities, or be deemed to transfer to the Governor any functions conferred by any existing Indian law on any Court, judge or officer, or any local or other authority.
- (2) Subject to the provisions of this Act, the executive authority of each Province extends to the matters with respect to which the Legislature of the Province has power to make laws.

It is clear that the embodiment of executive power and authority is the Governor, and not the Ministers. Nowhere are the Ministers mentioned as in any way conducting or sharing in the conduct of the executive governance of the country. Nowhere are they spoken of as being entitled, on behalf of the Popular Legislature, to superintend, direct or control the administration of the country. Nowhere in the Constitution do they even appear as formulating or guiding the national policy in administration. Their constitutional function is simply and solely to "aid and advise" the real *fons* and *origo* of the governmental power, authority and influence, viz. the Governor. They may have to shoulder the blame if anything goes wrong in the sphere of administration on which they are entitled to aid and advise the Governor; but it may be doubted if they would be able to claim any credit for any good they do to the country. The British Cabinet of Ministers is not even known to the Constitution; and yet they have unbounded powers in the governance of their country. The Indian Council of Ministers is very specifically mentioned in the Constitution Act;—only to have its powers, authority or influence most narrowly circumscribed.

It is equally clear that even such powers as are, or may have been, left to the Ministers may be transferred, delegated, or otherwise made over to officers subordinate to the Governor. Once such transfer, delegation, or divestment has been made, the Ministers will find it extremely difficult to restore to themselves the powers they have thus denuded themselves of. The real function of the Ministers, as conceived in Section 50, is "*to aid and advise the Governor*;" and that, too, in regard only to such functions as do not fall within the scope of his

exclusive discretion, or which are not incompatible with the exercise of his individual judgment, in which case, even though he may seek his Ministers' advice if he thinks proper, he can disregard that advice completely if he does not think it right and proper. And there would be no appeal against such legal highhandedness of the Governor. The Ministers will be unable to withhold supplies; for, as we shall see more clearly hereafter, that contingency has been more than amply provided for. The Governor has sufficient powers to procure finances for those acts of his which come within his discretionary authority, or in which he claims to exercise his individual judgment. However fully the Minister may be supported by the local Legislature, the Governor can override them, and suffer no fall in consequence, so long as he constitutional methods only, as provided by the Act of 1935, are in vogue.

We shall consider in another Chapter the actual sphere of authority, or functions, assigned to the Ministers under the new Constitution,—*i. e.* when we discuss the distribution of powers and functions between the Central and the Provincial Legislature. Generally speaking, the authority of the Ministers covers only two classes of subjects: (a) those on which the Provincial Legislature is entitled to legislate; and (b) such other matters as may be assigned to them, under Rules made for the transaction of Government business by the Governor, and under such conditions as may be laid down in those rules.

We have considered in this chapter the possibilities open to the Ministers as forming the executive government of the Province; we must leave it to a later Chapter



to evaluate their influence on the general policy of government in the Province, as embodied or expressed in Acts or resolutions of the Legislature.

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## CHAPTER V.

### Administrative Machinery in the Provinces

#### Public Services.

##### Volume and Variety of Public Services

Having described the visible superstructure of the Provincial Government under the New Reforms, let us now consider the actual work of administration in the Provinces.

This is entrusted to the various Public Servants, who are divided, for the sake of convenience, into 1, All-India Service; 2 & 3, Central Service Class I & II; 4 & 5 Railway Service class I and II; 6, Provincial Service; (Cp. Section 277 (1) ). Appointments to some of these are made by the Secretary of State ; to others by the Governor-General or the Central Authority ; to still others by the Railway authority ; and by the Governor or Provincial Authority.

Many, but not all, of these services are recruited on the advice of the several Public Services Commissions for the Federation and the Provinces. In a very few cases, like that of the Indian Civil Service proper,—some of the first appointments are made according to the results of the public competitive examinations. But the vogue of the public competitive examination is distinctly on the wane ; and, even in the Indian Civil Service, some appointments are now made otherwise than by an open competitive examination.

All-India Services consist of the Civil Service proper, the Indian Police Service, the Foreign Service, the Service of Engineers, the Medical Service (Civil), certain branches of the Educational Service, the Agricultural Service, and

the Veterinary Service. The Secretary of State has ceased to recruit—since 1924—under the recommendations of the Lee Commission to the following four services; namely, the Roads and Buildings Branch of the Service of Engineers, the Educational Service, the Agricultural Service, and the Veterinary Service.

According to the Report of the Joint Select Committee of Parliament, the personnel as well as the distribution as between Indians and Europeans, of these Services, amounted, on the 1st of January 1933, as follows<sup>1</sup> :—

1.	2.	3.	4.
	Europeans	Indians	Total
Civil Service	819	478	1,297
Police	505	152	665
Forest Service	203	96	299
Service of Engineers	304	292	596
Medical Service (Civil)	200	98	298
Educational Service	96	79	175
Agricultural Service	46	30	76
Veterinary Service	20	2	22
	<hr/> 2,193	<hr/> 1,227	<hr/> 3,428

<sup>1</sup> These figures do not indicate the amount of emoluments obtained by these two respective groups; but the probabilities are that the 60% of European officers absorb more than 80% of the salaries and emoluments in these offices. The following extract from the Budget speech of Sir George Schuster will help to give some idea of the costliness of the Public Services in India :—

“Taking the Civil Departments (exclusive of Railways), the total pay of all the officials of Government, British and Indian, high paid and low paid, Central and Provincial, amounts to just under 57 crores. Of this sum, the Central Government's share is about 16 crores, and the Provincial Governments' about 41 crores. This total is distributed between Gazetted officers on the one side, and what are called ‘establishments’ on the other. The term

*(Continued on page 157)*

### Provincial & Central Services

The Provincial Servants, that is to say, not including members of the All-India Service serving in the Provinces, work generally in each particular province without being transferred from Province to Province, or from Province to Centre. Generally speaking, they comprise the middle grades of posts in the entire Civil Administration of the country. Appointments to these Services are made by the Provincial Governments, who also regulate their conditions of service. The growing volume of provincial sentiment, in addition to the Communal, is reflected in the rules, or conventions, whereby recruitment to these Services is beginning to be confined more and more to citizens of the same Province. It may not be a very healthy tendency from the standpoint of national solidarity; but in view of the immense volume of educated unemployment noticeable in each province, some such provision as this seems to be inevitable, however undesirable it may be.

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*(Continued from page 156)*

establishment covers . . . . . all the clerical and lower paid staff. Roughly speaking, with a few exceptional cases, it may be said that this part of the staff includes posts with pay ranging to a maximum of about Rs. 500/- per month. I may say incidentally that it includes all the police, and the irregular levies employed in Frontier defence, to which special considerations apply. Taking these together, the total cost . . . . . of officers British and Indian, Central and Provincial, all together and including leave pay, amounts to 16 crores, of which the central Government's share is just under 4 crores, and the Provincial Governments' over 12. Incidentally, I may mention that out of this total, the cost of British officers amounts only to Rs. 6½ crores". (Budget speech, 1930-31).

This, however, is a wider category than the Services mentioned above, which must be absorbing between them not more than 7 crores, taking the average pay & c. of these officers at Rs. 1500/- per month. In these the highest services, the proportion of Europeans is still considerable, and of their emoluments yet more considerable.

As for the services under the charge of the Government of India,—the so-called Central Services,—they comprise the Central Secretariat, the Railway Service, the Posts and Telegraph Service, and the Imperial Customs Service. A few of the appointments in these Services are made by the Secretary of State for India, but the large majority of these appointments are made by the Government of India.<sup>1</sup>

These services would account for another 20 crores at least by way of salaries &c. to officers; and the Railways absorb a further 20 crores by way of salaries to officers. This makes a total Salary Bill to superior officers of close upon 100 crores per annum, or over 30% of the aggregate public expenditure.

### **Problems of Public Services in India**

At the time when the Government of India Bill of 1935 was before the Select Committee, and subsequently before Parliament, perhaps no other single subject attracted so much attention as that of the rights and safeguards of the Public Servants of India. Rightly or wrongly, a feeling had come to prevail in the minds of the Public Servants and their spokesmen in England that, under the new regime with Ministers responsible to the Indian people, their rights and conditions of service as well as their salaries, pensions and emoluments, will not be maintained in tact; that they would be open to criticism in the local parliament as well as the popular press, without any adequate means of defending themselves. Their families and

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<sup>1</sup> (In these Services, no mention is made of the Defence Service, including Civil Officers and the clerical staff engaged in work relating to the Defence Services, either directly in the Departments of Defence or incidentally).

dependants, moreover, they felt, would be deprived of the comforts of their own economy, or the aid of such organization as they may have built up for proper provision for such dependants.<sup>1</sup> The whole scheme of the Act seems accordingly to be motivated by the desire to secure the fullest possible safety to the Public Servants of all grades, in all material particulars in which they can have the slightest reason to entertain any apprehensions about the future.

The rights of the Public Servants and the conditions of service enjoyed up to the coming into effect of the New Constitution are summarised in an appendix to this chapter as given in the Report of the Joint Select Committee of Parliament.

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1 Says the Report of the Joint Select Committee of Parliament, (para 274)

"The problem of the Public Services in India and their future under a system of responsible government is one to which we have given prolonged and anxious consideration. The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service, staffed by persons capable of giving to successive Ministries advice based on long administrative experience, secure in their position during good behaviour, but required to carry out the policy upon which the Government and the Legislature eventually decide ... If, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at her disposal, and to co-operate with those who may be called upon to guide her destinies hereafter, it is equally necessary that fair and just conditions should be secured to them. . . This does not imply any doubt or suspicion as to the treatment which they are likely to receive under the new Constitution; but since in India the whole machinery of government depends so greatly upon the efficiency and contentment of the Public Services as a whole, especially during a period of transition, it is a matter in which no room should be left for doubt. It is not because he expects his house to be burned down that a prudent man insures against fire. He adopts an ordinary business precaution, and his action in doing so is not to be construed into a reflection either upon his neighbours' integrity or his own."

The problems in connection with the Public Servants in India may be classified, for our present purpose, into the following main categories :—

- (a) Indianisation, *i. e.* replacement of the British element still maintained in the public services of India by the Indian element, with due regard to the requirements of qualifications and efficiency in the discharge of the duties entrusted to such officers;
- (b) Recruitment to the public services, *i. e.*, the comparative advantages of open Competitive Examinations for making first appointments to the Public Service, and Patronage, or selection by certain specified authorities. In this will also be included the question of due representation to the Minorities in the Public Services.
- (c) Pay, including the basic and standard scale of salaries in the several departments and grades of Public Service, the rules of promotion from grade to grade, and the consideration of the relative incidence of the prevailing scales upon the taxable capacity of the people.
- (d) Allowances,—Leave, Personal, Travelling, Officiating, House, Exchange Compensation Allowance, and Local Allowances to individuals.
- (e) Pensions, including superannuation or retiring Pensions, and compensation for premature abolition of posts, or retirement from service before the due date.
- (f) General matters of discipline, including procedure for making complaints by or against Public Servants, hearing and disposal of the same, as well as of punishment imposeable in regard thereto—

Before considering generally these problems, let us set out the scheme of the Act, as contained in Sections



240 to 277, leaving out Sections 232—239, relating to the Defence Services, as not pertaining to the present part of the study of the new Constitution.

Chapter II, Part X of the Act, begins with Section 240 dealing with the tenure of office of persons employed in any civil capacity in India.

CHAPTER II.  
CIVIL SERVICES.  
*General Provisions.*

**240.**—(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure.  
(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:

Provided that this subsection shall not apply—

- (a) where a person is dismissed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where an authority empowered to dismiss a person or reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to give to that person an opportunity of showing cause.

(4) Notwithstanding that a person holding a civil post under the Crown in India holds office during His

Majesty's pleasure, any contract under which a person, not being a member of a civil service of the Crown in India, is appointed under this Act to hold such a post may, if the Governor-General, or, as the case may be, the Governor, deems it necessary in order to secure the services of a person having special qualifications, provide for the payment to him of compensation if before the expiration of an agreed period that post is abolished or he is, for reasons not connected with any misconduct on his part, required to vacate that post.

**241.**—(1) Except as expressly provided by this Act, appointments to the civil services of, and civil posts under, the Crown in India, shall, after the commencement of Part III of this Act, be made—

Recruitment and conditions of service.

- (a) in the case of services of the Federation, and posts in connection with the affairs of the Federation, by the Governor-General or such person as he may direct;
- (b) in the case of services of a Province, and posts in connection with the affairs of a Province, by the Governor or such person as he may direct.

(2) Except as expressly provided by this Act, the conditions of service of persons serving His Majesty in a civil capacity in India shall, subject to the provisions of this section, be such as may be prescribed—

- (a) in the case of persons serving in connection with the affairs of the Federation, by rules made by the Governor-General or by some person or persons authorised by the Governor-General to make rules for the purpose;
- (b) in the case of persons serving in connection with the affairs of a Province, by rules made by the Governor of the Province or by some person or persons authorised by the Governor to make rules for the purpose:

Provided that it shall not be necessary to make rules regulating the conditions of service of persons employed temporarily on the terms that their employment may be terminated on one month's notice or less, and nothing in this sub-section shall be construed as requiring the rules regulating the conditions of service of any class of persons to extend to any matter which appears to the rule making authority to be a matter not suitable for regulation by rule in the case of that class.

(3) The said rules shall be so framed as to secure—

- (a) that, in the case of a person who before the commencement of Part III of this Act was serving His Majesty in a civil capacity in India, no order which alters or interprets to his disadvantage any rule by which his conditions of service are regulated shall be made except by an authority which would have been competent to make such an order on the eighth day of March, nineteen hundred and twenty-six, or by some person empowered by the Secretary of State to give directions in that respect;
- (b) that every such person as aforesaid shall have the same rights of appeal to the same authorities from any order which—
  - (i) punishes or formally censures him; or
  - (ii) alters or interprets to his disadvantage any rule by which his conditions of service are regulated; or
  - (iii) terminates his appointment otherwise than upon his reaching the age fixed for superannuation,

as he would have had immediately before the commencement of Part III of this Act, or such similar rights of appeal to such corresponding authorities as may be directed by the Secretary of State or by some person empowered by the Secretary of State to give directions in that respect;

- (c) that every other person serving His Majesty in a civil capacity in India shall have at least one appeal against any such order as aforesaid, not being an order of the Governor-General or a Governor.

(4) Notwithstanding anything in this section, but subject to any other provision of this Act, Acts of the appropriate Legislature in India may regulate the conditions of service of persons serving His Majesty in a civil capacity in India, and any rules made under this section shall have effect subject to the provisions of any such Act:

Provided that nothing in any such Act shall have effect so as to deprive any person of any rights required to be given to him by the provisions of the last preceding subsection.

(5) No rules made under this section and no Act of any Legislature in India shall be construed to limit or abridge the power of the Governor-General or a Governor to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable :

Provided that, where any such rule or Act is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by that rule or Act.

**242.**—(1) In its application to appointments to, and to persons serving in, the railway services of the Federation, the last preceding section shall have effect as if for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Federal Railway Authority.

Application of preceding section to Railway, Customs, Postal and Telegraph services, and officials of courts.

(2) In framing rules for the regulation of recruitment to superior railway posts, the Federal Rail-

way Authority shall consult the Federal Public Service Commission, and in recruitment to such posts and in recruitment generally for railway purposes shall have due regard to the past association of the Anglo-Indian community with Railway Services in India, and particularly to the specific class, character, and numerical percentages of the posts hitherto held by members of that community and the remuneration attaching to such posts, and shall give effect to any instructions which may be issued by the Governor-General for the purpose of securing, so far as practicable to each community in India a fair representation in the railway services of the Federation, but, save as aforesaid, it shall not be obligatory on the Authority to consult with, or otherwise avail themselves of the services of, the Federal Public Service Commission.

(3) In framing the rules for the regulation of recruitment to posts in the Customs, Postal and Telegraph services, the Governor-General or person authorised by him in that behalf shall have due regard to the past association of the Anglo-Indian community with the said services, and particularly to the specific class, character and numerical percentages of the posts previously held in the said services by members of the said community and to the remuneration attaching to such posts.

(4) In its application to appointments to, and to persons serving on, the staff attached to the Federal Court or the staff attached to a High Court, the said section shall have effect as if, in the case of the Federal Court, for any reference to the Governor-General in paragraph (a) of subsection (1), in paragraph (a) of subsection (2) and in subsection (5) there were substituted a reference to the Chief Justice of India and as if, in the case of a High Court, for any reference to the Governor in paragraph (b) of subsection (1), in paragraph (b) of subsection (2) and in subsection (5) there were substituted a reference to the chief justice of the court:

Provided that—

(a) in the case of the Federal Court, the Governor-General and in the case of a High Court, the Go-

vernor may in his discretion require that in such cases as he may in his discretion direct no person not already attached to the court shall be appointed to any office connected with the court save after consultation with the Federal Public Service Commission, or the Provincial Public Service Commission, as the case may be ;

- (b) rules made under the said subsection (2) by a chief justice shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor-General or, as the case may be, the Governor.

**243.** Notwithstanding anything in the foregoing Special provisions as to police. provisions of this chapter, the conditions of service of the subordinate ranks of the various police forces in India shall be such as may be determined by or under the Acts relating to those forces respectively.

*Recruitment by Secretary of State and provisions  
as to certain posts*

**244.**—(1) As from the commencement of Part III of this Act appointments to the civil services known as the Indian Civil Service, the Indian Medical Service (Civil), and the Indian Police Service (which last mentioned service shall thereafter be known as " the Indian Police " ) shall, until Parliament otherwise determines, be made by the Secretary of State.

(2) Until Parliament otherwise determines, the Secretary of State may also make appointments to any service or services which at any time after the said date he may deem it necessary to establish for the purpose of securing the recruitment of suitable persons to fill civil posts in connection with the discharge of any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion.

(3) The respective strengths of the said services shall be such as the Secretary of State may from time to time prescribe, and the Secretary of State shall in each year cause to be laid before each House of Parliament a statement of the appointments made thereto and the vacancies therein.

(4) It shall be the duty of the Governor-General to keep the Secretary of State informed as to the operation of this section, and he may after the expiration of such period as he thinks fit make recommendations for the modification thereof.

In discharging his functions under this subsection, the Governor-General shall act in his discretion.

**245.** Until Parliament otherwise determines, the Secretary of State may for the purpose of securing efficiency in irrigation in any Province, appoint persons to any civil service of, or civil post under, the Crown in India concerned with irrigation.

**246.**—(1) The Secretary of State shall make rules specifying the number and character of the civil posts under the Crown (other than posts in connection with any functions of the Governor-General which the Governor-General is by or under this Act required to exercise in his discretion) which, subject to the provisions of this subsection, are to be filled by persons appointed by the Secretary of State to a civil service of, or a civil post under, the Crown in India, and except under such conditions as may be prescribed in the rules no such post shall, without the previous sanction of the Secretary of State—

- (a) be kept vacant for more than three months ; or
- (b) be filled otherwise than by the appointment of such a person as aforesaid ; or
- (c) be held jointly with any other such post.



(2) Appointments and postings to the said posts (hereinafter in this Part of this Act referred to as "reserved posts") shall—

(a) in the case of posts in connection with the affairs of the Federation, be made by the Governor-General, exercising his individual judgment;

(b) in the case of posts in connection with the affairs of a Province, be made by the Governor of the Province, exercising his individual judgment.

(3) All rules made under this section shall, so soon as may be after they are made, be laid before each House of Parliament and, if either House of Parliament within the next subsequent twenty-eight days on which that House has sat after any such rule has been laid before it resolves that the rule shall be annulled, the rule shall thenceforth be void but without prejudice to the validity of anything previously done thereunder or to the making of a new rule.

**247.**—(1) The conditions of service of all persons appointed to a civil service or a civil post by the Secretary of State shall —

Conditions of service, pensions, &c. of persons recruited by Secretary of State.

(a) as respects pay, leave and pensions, and general rights in regard to medical attendance, be such as may be prescribed by rules to be made by the Secretary of State;

(b) as respects other matters with respect to which express provision is not made by this chapter, be such as may be prescribed by rules to be made by the Secretary of State in so far as he thinks fit to make such rules, and, in so far and so long as provision is not made by such rules, by rules to be made, as respects persons serving in connection with the affairs of the Federation, by the Governor-General or some person or persons authorised by the Governor-General to make rules for the purpose and, as respects persons serving in connection with

the affairs of a Province, by the Governor of the Province or some person or persons authorised by the Governor to make rules for the purpose:

Provided that no rule made under this subsection shall have effect so as to give to any person appointed to a civil service or civil post by the Secretary of State less favourable terms as respects remuneration or pension than were given to him by the rules in force on the date on which he was first appointed to his service or was appointed to his post.

(2) Any promotion of any person appointed to a civil service or a civil post by the Secretary of State or any order relating to leave of not less than three months of any such person, or any order suspending any such person from office shall, if he is serving in connection with the affairs of the Federation, be made by the Governor-General exercising his individual judgment and, if he is serving in connection with the affairs of a Province, be made by the Governor exercising his individual judgment.

(3) If any such person as aforesaid is suspended from office, his remuneration shall not during the period of his suspension be reduced except to such extent, if any, as may be directed by the Governor-General exercising his individual judgment or, as the case may be, by the Governor exercising his individual judgment.

(4) The salary and allowances of any such person as aforesaid shall, if he is serving in connection with the affairs of the Federation, be charged on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, be charged on the revenues of the Province :

Provided that, if any such person is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the Railway Fund.

(5) Pensions payable to or in respect of any such person as aforesaid, and government contributions in respect of any such person to any pension fund or provident fund, shall be charged on the revenues of the Federation.

(6) No award of a pension less than the maximum pension allowable under rules made under this section shall be made, except in each case with the consent of the Secretary of State.

(7) No rules made under this section shall be construed to limit or abridge the power of the Secretary of State to deal with the case of any person serving His Majesty in a civil capacity in India in such manner as may appear to him to be just and equitable, and no rules made under this section by any person other than the Secretary of State shall be construed to limit or abridge the power of the Governor-General or, as the case may be, the Governor of a Province to deal with the case of any such person in such manner as may appear to him to be just and equitable :

Provided that, where any rule made under this section is applicable to the case of any person, the case shall not be dealt with in any manner less favourable to him than that provided by the rule.

**248.**—(1) If any person appointed to a civil service or a civil post by the Secretary of State is aggrieved by an order affecting his conditions of service and on due application to the person by whom the order was made does not receive the redress to which he considers himself entitled, he may, without prejudice to any other mode of obtaining redress, complain, if he is serving in connection with the affairs of the Federation, to the Governor-General and, if he is serving in connection with the affairs of a Province, to the Governor of the Province, and the Governor-General or Governor, as the case may be, shall examine into the complaint and cause such action to be taken thereon as appears to him exercising his individual judgment to be just and equitable.

(2) No order which punishes or formally censures any such person as aforesaid, or affects adversely his emoluments or rights in respect of pension, or decides adversely to him the subject-matter of any memorial, shall be made except, if he is serving in connection with the affairs of the Federation, by the Governor-General, exercising his individual judgment, or, if he is serving in connection with the affairs of a Province, by the Governor of that Province, exercising his individual judgment.

(3) Any person appointed to a civil service or a civil post by the Secretary of State may appeal to the Secretary of State against any order made by any authority in India which punishes or formally censures him, or alters or interprets to his disadvantage any rule by which his conditions of service are regulated.

(4) Any sums ordered to be paid out of the revenues of the Federation or a Province to or in respect of any such person as aforesaid on an appeal made under this section shall be charged on those revenues.

**249.**—(1) If by reason of anything done under this Act the conditions of service of any person appointed to a civil service or a civil post by the Secretary of State have been adversely affected, or if for any other reason it appears to the Secretary of State that compensation ought to be granted to, or in respect of, any such person, he or his representatives shall be entitled to receive from the revenues of the Federation, or if the Secretary of State so directs, from the revenues of a Province, such compensation as the Secretary of State may consider just and equitable.

(2) Any sum payable under this section from the revenues of the Federation or the revenues of a Province shall be charged on the revenues of the Federation or, as the case may be, that Province.

(3) For the avoidance of doubt it is hereby declared that the foregoing provisions of this section in no way prohibit expenditure by the Governor-General, or, as the

case may be, the Governor, from the revenues of the Federation or a Province by way of compensation to persons who are serving or have served His Majesty in India in cases to which those provisions do not apply.

*Provisions as to persons appointed by Secretary of State in Council, persons holding reserved posts and commissioned officers in civil employment.*

**250.**—(1) Subject to the provisions of this section, the provisions of the four last preceding sections and any rules made thereunder shall apply in relation to any person who was appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India as they apply in relation to persons appointed to a civil service or civil post by the Secretary of State.

(2) Subject to the provisions of this section, the said sections and rules shall, in such cases and with such exceptions and modifications as the Secretary of State may decide, also apply in relation to any person who—

- (a) not being a person appointed as aforesaid by the Secretary of State or the Secretary of State in Council, holds or has held a reserved post; or
- (b) holds or has held any civil post under the Crown in India and is, or was when he was first appointed to such a post, an officer in His Majesty's forces.

(3) In relation to any person who was appointed before the commencement of Part III of this Act to a civil service of, or to a civil post under, the Crown in India, the provision contained in the sections aforesaid that no rule as to conditions of service shall have effect so as to give to any person less favourable terms as regards remuneration or pension than were given to him by the rules in force on the date on which he was first ap-

pointed to his service or was appointed to his post, shall be construed as a provision that no such rule shall have effect so as to give to any person less favourable terms as respects the said matters than were given to him by the rules in force immediately before the coming into operation of the rule.

(4) In its application, by virtue of this section, to persons serving in the railway services of the Federation, the second of the four last preceding sections (which relates to the conditions of service, pensions, &c., of persons recruited by the Secretary of State) shall have effect as if for any reference to the Governor-General in paragraph (b) of subsection (1) thereof and in subsections (2), (3) and (7) thereof there were substituted a reference to the Federal Railway Authority.

(5) Any liability of the Federation or of any Province to or in respect of any person appointed before the commencement of Part III of this Act by the Secretary of State in Council to a civil service of, or a civil post under, the Crown in India, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall, notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act.

*Special provisions as to staffs of the High Commissioner for India and the Auditor of Indian Home Accounts*

**251.** The provisions of this Part of this Act shall apply in relation to appointments to, and to persons serving on, the staffs of the High Commissioner for India and the Auditor of Indian Home Accounts as if the service of members of those staffs were service rendered in India :

Staff of  
High Com-  
missioner  
and Auditor  
of Indian  
Home  
Accounts.

Provided that—

- (a) appointments to the staff of the Auditor of Indian Home Accounts shall be made by him subject, as respects numbers, salaries and qualifications, to the approval of the Governor-General in his discretion; and
- (b) in relation to that staff the functions of the Governor-General under this Part of this Act shall be exercised by him in his discretion.

**252.**—(1) All persons who immediately before the commencement of Part III of this Act were members of the staff of the High Commissioner for India, or members of the staff of the Auditor of the accounts of the Secretary of State in Council, shall continue to be, or shall become, members of the staff of the High Commissioner for India or, as the case may be, of the Auditor of Indian Home Accounts.

(2) All such persons as aforesaid shall hold their offices or posts subject to like conditions of service as to remuneration, pensions or otherwise, as theretofore, or not less favourable conditions, and shall be entitled to reckon for purposes of pension any service which they would have been entitled to reckon if this Act had not been passed.

(3) The salaries, allowances and pensions payable to, or in respect of, such of the persons aforesaid as were members of the staff of the Auditor of the accounts of the Secretary of State in Council shall be charged on the revenues of the Federation, and the salaries, allowances and pensions payable to, or in respect of, other such persons as aforesaid shall be so charged in so far as those salaries, allowances and pensions would, but for the passing of this Act, have been payable without being submitted to the vote of the Legislative Assembly of the Indian Legislature.



*Special Provisions as to Judicial Officers*

**253.**—(1) The provisions of this chapter shall not  
Judges of the Federal Court and High Courts. apply to the judges of the Federal Court or of any High Court :

Provided that—

- (a) for the purposes of this section a member of any of the civil services of the Crown in India who is acting temporarily as a judge of a High Court shall not be deemed to be a judge of that court :
- (b) nothing in this section shall be construed as preventing the Orders in Council relating to the salaries, leave and pensions of judges of the Federal Court, or of any High Court, from applying to such of those judges as were, before they were appointed judges, members of a civil service of the Crown in India, such of the rules relating to that service as may appear to His Majesty to be properly applicable in relation to them :
- (c) nothing in this section shall be construed as excluding the office of judge of the Federal Court or of a High Court from the operation of the provisions of this chapter with respect to the eligibility for civil office of persons who are not British subjects.

(2) Any pension which under the rules in force immediately before the commencement of Part III of this Act was payable to or in respect of any person who, having been a judge of a High Court within the meaning of this Act or of the High Court at Rangoon, retired before the commencement of the said Part III shall, not withstanding anything in this Act, continue to be payable in accordance with those rules and shall be charged on the revenues of the Federation.

(3) Any liability of the Federation or of any Province to or in respect of any person who is, at the commence-

ment of Part III of this Act, a judge of a High Court within the meaning of this Act, or to or in respect of any such person as is mentioned in subsection (2) of this section, being a liability to pay a pension granted to or in respect of any such person or any other liability of such a nature as to have been enforceable in legal proceedings against the Secretary of State in Council if this Act had not been passed, shall notwithstanding anything in this Act, be deemed, for the purposes of the provisions of Part VII of this Act relating to legal proceedings, to be a liability arising under a statute passed before the commencement of Part III of this Act.

**254.**—(1) Appointments of persons to be, and the District judges, &c. posting and promotion of, district judges in any Province shall be made by the Governor of the Province, exercising his individual judgment, and the High Court shall be consulted before a recommendation as to the making of any such appointment is submitted to the Governor.

(2) A person not already in the service of His Majesty shall only be eligible to be appointed a district judge if he has been for not less than five years a barrister, a member of the Faculty of Advocates in Scotland, or a pleader and is recommended by the High Court for appointment.

(3) In this and the next succeeding section the expression "district judge" includes additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, sessions judge, additional sessions judge, and assistant sessions judge.

**255.**—(1) The Governor of each Province shall, after subordi- consultation with the Provincial Public nate civil Service Commission and with the High judicial Court, make rules defining the standard of service. qualifications to be attained by persons desirous of entering the subordinate civil judicial service of a Province

In this section, the expression "subordinate civil judicial service" means a service consisting exclusively of persons intended to fill civil judicial posts inferior to the post of district judge.

(2) The Provincial Public Service Commission for each Province, after holding such examinations, if any, as the Governor may think necessary, shall from time to time out of the candidates for appointment to the subordinate civil judicial service of the Province make a list or lists of the persons whom they consider fit for appointment to that service, and appointments to that service shall be made by the Governor from the persons included in the list or lists in accordance with such regulations as may from time to time be made by him as to the number of persons in the said service who are to belong to the different communities in the Province.

(3) The posting and promotion of, and the grant of leave to, persons belonging to the subordinate civil judicial service of a Province and holding any post inferior to the post of district judge, shall be in the hands of the High Court, but nothing in this section shall be construed as taking away from any such person the right of appeal required to be given to him by the foregoing provisions of this chapter, or as authorising the High Court to deal with any such person otherwise than in accordance with the conditions of his service prescribed thereunder.

**256.** No recommendation shall be made for the grant of magisterial powers or of enhanced magisterial powers to, or the withdrawal of any magisterial powers from, any person save after consultation with the district magistrate of the district in which he is working, or with the Chief Presidency magistrate, as the case may be.

*Special Provisions as to Political Department*

**257.**—(1) Subject to the provisions of this section, the provisions of this Part of this Act shall not apply in relation to persons wholly or

Officers of  
political  
department.

mainly employed in connection with the exercise of the functions of the Crown in its relations with Indian States.

(2) Notwithstanding anything in the preceding subsection, all persons so employed immediately before the commencement of Part III of this Act shall hold their offices or posts subject to the like conditions of service as to remuneration, pensions or otherwise as theretofore or not less favourable conditions, and in relation to those persons anything which might, but for the passing of this Act, have been done by or in relation to the Secretary of State in Council shall be done by or in relation to the Secretary of State, acting with the concurrence of his advisers.

(3) Nothing in this section shall be construed as affecting the application to such persons of the rule of law that, except as otherwise provided by statute, every person employed under the Crown holds office during His Majesty's pleasure.

*Provisions for the protection of certain existing officers*

**258.**—(1) No civil post which, immediately before the commencement of Part III of this Act, was a post in, or a post required to be held by some member of a Central Service Class I, a Central Service Class II, a Railway Service Class I, a Railway Service Class II, or a Provincial Service, shall, if the abolition thereof would adversely affect any person who immediately before the said date was a member of any such service, be abolished, except—

- (a) in the case of a post in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;
- (b) in the case of a post in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(2) No rule or order affecting adversely the pay, allowances or pensions payable to, or in respect of, a

person appointed before the coming into operation of this Part of this Act to a Central Service Class I, to a Railway Service Class I, or to a Provincial service, and no order upon a memorial submitted by any such person, shall be made except—

- (a) in the case of a person who is serving or has served in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment;
- (b) in the case of a person who is serving or has served in connection with the affairs of a Province, by the Governor of the Province exercising his individual judgment.

(3) In relation to any person mentioned in this section who was appointed to a civil service of, or civil post under, the Crown in India by the Secretary of State or the Secretary of State in Council, or is an officer in His Majesty's forces, the foregoing provisions of this section shall have effect as if for the reference to the Governor-General or the Governor, as the case may be, there was substituted a reference to the Secretary of State.

**259.**—(1) The salary and allowances of any person who was appointed before the first day of April, nineteen hundred and twenty-four, otherwise than by the Secretary of State in Council, to a service or a post which at any time between that date and the coming into operation of this Part of this Act was classified as a superior service or post shall be charged, if he is serving in connection with the affairs of the Federation, on the revenues of the Federation and, if he is serving in connection with the affairs of a Province, on the revenues of that Province:

Provided that, if any such person as aforesaid is serving in connection with the railways in India, so much only of his salary and allowances shall be charged on the revenues of the Federation as is not paid out of the railway fund.

(2) Any pension payable to or in respect of a person appointed as aforesaid, and any government contributions to any provident fund or pensions fund in respect of any such person, shall be charged on the revenues of the Federation.

(3) The provisions of the last preceding subsection shall also apply in relation to persons who retired before the first day of April, nineteen hundred and twenty four, and before they retired belonged to services or held posts which were as from the said date classified as superior services or posts, or which are declared by the Secretary of State to have been services or posts equivalent in character to services or posts so classified.

**260.**—(1) Except as otherwise expressly provided in this chapter, any pension payable to or in respect of any person who, having been appointed to a civil service of, or a civil post under, the Crown in India, retired from the service of His Majesty before the commencement of Part III of this Act shall, if it would have been payable by the Local Government in any Province if this Act had not passed, be paid out of the revenues of the corresponding Province and in any other case shall be paid out of the revenues of the Federation.

General provisions as to persons retiring before commencement of Part III.

(2) Any pension payable to or in respect of any person who, having served in Burma or Aden, retired from an All-India Service, a Central Service Class I, a Central Service Class II, a Railway Service Class I, or a Railway Service Class II, before the commencement of Part III of this Act shall be paid out of the revenues of the Federation, but save as aforesaid nothing in this section applies to any person who retired after service in Burma or Aden.

#### *Miscellaneous*

**261.** The powers conferred by this and the subsequent chapters of this Part of this Act on the Secretary of State shall not be exercisable with

Secretary of State to act with

concurrence of his advisers. by him except with the concurrence of his advisers.

**262.**—(1) The Ruler or a subject of a Federated State shall be eligible to hold any civil office under the Crown in India in connection with the affairs of the Federation, and the Governor-General may declare that the Ruler or any subject of a specified Indian State which is not a Federated State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any such office, being an office specified in the declaration.

(2) The Governor of a Province may declare that the Ruler or any subject of a specified Indian State, or any native of a specified tribal area or territory adjacent to India, shall be eligible to hold any civil office in connection with the affairs of the Province, being an office specified in the declaration.

(3) The Secretary of State may declare that any named subject of an Indian State, or any named native of a tribal area or territory adjacent to India, shall be eligible for appointment by him to any civil service under the Crown in India to which he makes appointments, and any person who, having been so declared eligible, is appointed to such a service, shall be eligible to hold any civil office under the Crown in India.

(4) Subject as aforesaid and to any other express provisions of this Act, no person who is not a British subject shall be eligible to hold any office under the Crown in India :

Provided that the Governor-General or, in relation to a Province, the Governor may authorise the temporary employment for any purpose of a person who is not a British subject.

(5) In the discharge of his functions under this section the Governor-General or the Governor of a Province shall exercise his individual judgment.



**263.** If an agreement is made between the Federation and one or more Provinces, or between two or more Provinces, for the maintenance or creation of a service common to the Federation and one or more Provinces, or common to two or more Provinces, or for the maintenance or creation of a post the functions whereof are not restricted to the affairs of the Federation or one Province, the agreement may make provision that the Governor-General or any Governor, or any Public Service Commission, shall do in relation to that service or post anything which would under the provisions of this chapter be done by the Governor of the Provincial Public Service Commission if the service or post was a service or post in connection with the affairs of one Province only.

### CHAPTER III

#### PUBLIC SERVICE COMMISSIONS

**264.**—(1) Subject to the provisions of this section, there shall be a Public Service Commission for the Federation and a Public Service Commission for each Province.

Public  
Service  
Commis-  
sions.

(2) Two or more Provinces may agree that—

(a) there shall be one Public Service Commission for that group of Provinces ; or

(b) that the Public Service Commission for one of the Provinces shall serve the needs of all the Provinces,

and any such agreement may contain such incidental and consequential provisions as may appear necessary or desirable for giving effect to the purposes of the agreement and shall, in the case of an agreement that there shall be one Commission for a group of Provinces, specify by what Governor or Governors the functions which are under this Part of this Act to be discharged by the Governor of a Province are to be discharged.

(3) The Public Service Commission for the Federation if requested so to do by the Governor of a Province may, with the approval of the Governor-General, agree to serve all or any of the needs of the Province.

(4) References in this Act to the Federal Public Service Commission or a Provincial Public Service Commission shall, unless the context otherwise requires, be construed as references to the Commission serving the needs of the Federation or, as the case may be, the Province as respects the particular matter in question.

**265.**—(1) The chairman and other members of a Public Service Commission shall be appointed, in the case of the Federal Commission, by the Governor-General in his discretion, and in the case of a Provincial Commission, by the Governor of the Province in his discretion:

Provided that at least one-half of the members of every Public Service Commission shall be persons who at the dates of their respective appointments have held office for at least ten years under the Crown in India.

(2) In the case of the Federal Commission, the Governor-General in his discretion and, in the case of a Provincial Commission, the Governor of the Province in his discretion, may by regulations—

- (a) determine the number of members of the commission, their tenure of office and their conditions of service; and
  - (b) make provision with respect to the numbers of staff of the commission and their conditions of service,
- (3) On ceasing to hold office—
- (a) the chairman of the Federal Commission shall be ineligible for further employment under the Crown in India;
  - (b) the chairman of a Provincial Commission shall be eligible for appointment as the chairman

or a member of the Federal Commission, or as the chairman of another Provincial Commission, but not for any other employment under the Crown in India;

- (c) no other member of the Federal or of any Provincial Commission shall be eligible for any other appointment under the Crown in India without the approval, in the case of an appointment in connection with the affairs of a Province, of the Governor of the Province in his discretion and, in the case of any other appointment, of the Governor-General in his discretion.

**266** — (1) It shall be the duty of the Federal and the Provincial Public Service Commissions to conduct examinations for appointments to the services of the Federation and the services of the Province respectively.

(2) It shall also be the duty of the Federal Public Service Commission, if requested by any two or more Provinces so to do; to assist those Provinces in framing and operating schemes of joint recruitment for their forest services, and any other services for which candidates possessing special qualifications are required.

(3) The Secretary of State as respects services and posts to which appointments are made by him, the Governor-General in his discretion as respects other services and posts in connection with the affairs of the Federation, and the Governor in his discretion as respects other services and posts in connection with the affairs of a Province, may make regulations specifying the matters on which either generally, or in any particular class of case or in any particular circumstances, it shall not be necessary for a Public Service Commission to be consulted but, subject to regulations so made and to the provisions of the next succeeding subsection, the Federal Commission or, as the case may be, the Provincial Commission shall be consulted—

- (a) on all matters relating to methods of recruitment to civil services and for civil posts;
- (b) on the principles to be followed in making appointments to civil services and posts and in making promotions and transfers from one service to another and on the suitability of candidates for such appointments, promotions or transfers;
- (c) on all disciplinary matters affecting a person serving His Majesty in a civil capacity in India, including memorials or petitions relating to such matters;
- (d) on any claim by or in respect of a person who is serving or has served His Majesty in a civil capacity in India that any costs incurred by him in defending legal proceedings instituted against him in respect of acts done or purporting to be done in the execution of his duty should be paid out of the revenues of the Federation or, as the case may be, the Province;
- (e) on any claim for the award of a pension in respect of injuries sustained by a person while serving His Majesty in a civil capacity in India, and any question as to the amount of any such award,

and it shall be the duty of a Public Service Commission to advise on any matter so referred to them and on any other matter which the Governor-General in his discretion, or, as the case may be, the Governor in his discretion, may refer to them.

(4) Nothing in this section shall require a Public Service Commission to be consulted as respects the manner in which appointments and posts are to be allocated as between the various communities in the Federation or a Province or, in the case of the subordinate ranks of the various police forces in India, as respects any of the matters mentioned in paragraphs (a), (b) and (c) of subsection (3) of this section.

**267.** Subject to the provisions of this section, an Act of the Federal Legislature or the Provincial Legislature may provide for the exercise of additional functions by the Federal Public Service Commission or, as the case may be, by the Provincial Public Service Commission.

Provided that--

(a) no Bill or amendment for the purposes aforesaid shall be introduced or moved without the previous sanction of the Governor-General in his discretion, or, as the case may be, of the Governor in his discretion; and

(b) it shall be a term of every such Act that the functions conferred by it shall not be exercisable—

(i) in relation to any person appointed to a service or a post by the Secretary of State or the Secretary of State in Council, any officer in His Majesty's Forces, or any holder of a reserved post, except with the consent of the Secretary of State; or

(ii) where the Act is a provincial Act, in relation to any person who is not a member of one of the services of the Province, except with the consent of the Governor-General.

**268.** The expenses of the Federal or a Provincial Public Service Commission, including any salaries, allowances and pensions payable to or in respect of the members or staff of the Commission, shall be charged on the revenues of the Federation or, as the case may be, the Province:

Provided that nothing in this section shall charge on the revenues of a Province any pension which is by virtue of the provision of chapter II of this Part of this Act charged on the revenues of the Federation.

## CHAPTER IV

### CHAPLAINS

**269.**—(1) There may, as heretofore, be an establishment of chaplains to minister in India to be appointed by the Secretary of State, and the provisions of chapter II of his Part of this Act shall, with any necessary modifications, apply in relation to that establishment and to persons appointed as chaplains by the Secretary of State or by the Secretary of State in Council, as they apply in relation to the civil services to which appointments are to be made by the Secretary of State and to persons appointed to a civil service under the Crown in India by the Secretary of State or by the Secretary of State in Council, and for the purposes of the provisions of chapter II relating to persons who retired before the commencement of Part III of this Act the said establishment shall be deemed to be an all-India service.

(2) So long as an establishment of chaplains is maintained in the Province of Bengal two members of that establishment in the Province must always be ministers of the Church of Scotland and shall be entitled to have out of the revenues of the Federation such salary as is from time to time allotted to the military chaplains in that Province.

This subsection applies to the Province of Madras and to the Province of Bombay as it applies to the Province of Bengal.

(3) The ministers of the Church of Scotland so appointed chaplains must be ordained and inducted by the Presbytery of Edinburgh according to the forms and solemnities used in the Church of Scotland, and shall be subject to the spiritual and ecclesiastical jurisdiction in all things of the Presbytery of Edinburgh, whose judgments shall be subject to dissent, protest and appeal to the Provincial synod of Lothian and Tweeddale and to the General Assembly of the Church of Scotland.

## CHAPTER V

## GENERAL

**270.**— (1) No proceedings civil or criminal shall be instituted against any person in respect of any act done or purporting to be done in the execution of his duty as a servant of the Crown in India or Burma before the relevant date, except with the consent, in the case of a person who was employed in connection with the affairs of the Government of India or the affairs of Burma, of the Governor-General in his discretion, and in the case of a person employed in connection with the affairs of the Province, of the Governor of that Province in his discretion.

(2) Any civil or criminal proceedings instituted, whether before or after the coming into operation of this Part of this Act, against any person in respect of any act done or purporting to be done in the execution of his duty as servant of the Crown in India or Burma before the relevant date shall be dismissed unless the court is satisfied that the acts complained of were not done in good faith, and, where any such proceedings are dismissed the costs incurred by the defendant shall, in so far as they are not recoverable from the persons instituting the proceedings, be charged, in the case of persons employed in connection with the functions of the Governor-General in Council or the affairs of Burma, on the revenues of the Federation, and in the case of persons employed in connection with the affairs of a Province, on the revenues of that Province.

(3) For the purposes of this section—

the expression “the relevant date” means, in relation to acts done by persons employed about the affairs of a Province or about the affairs of Burma, the commencement of Part III of this Act and, in relation to acts done by persons employed about the affairs of the Federation, the date of the establishment of the Federation;



references to persons employed in connection with the functions of the Governor-General in Council include references to persons employed in connection with the affairs of any Chief Commissioner's Province:

a person shall be deemed to have been employed about the affairs of a Province if he was employed about the affairs of the Province as constituted at the date when the act complained of occurred or is alleged to have occurred.

**271.**—(1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Indian Code of Criminal Procedure, or by sections eighty to eighty-two of the Indian Code of Civil Procedure, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in the discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecutions and the determination of the court before which, the person by whom and the manner in which, a public servant is to be tried, shall be exercisable only—

- (a) in the case of a person employed in connection with the affairs of the Federation, by the Governor-General exercising his individual judgment; and
- (b) in the case of a person employed in connection with the affairs of a Province, by the Governor of that Province exercising his individual judgment:

Provided that nothing in this subsection shall be construed as restricting the power of the Federal or a

Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in subsection (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in the case of a person employed in connection with the affairs of the Federation, or if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on the revenues of the Federation or of the Province, as the case may be.

**272.** Any pension payable to or in respect of a person who—

Provisions  
as to pay-  
ment of  
certain pen-  
sions and  
exemption  
of those  
pensions  
from taxa-  
tion in  
India.

(a) before the commencement of Part III of this Act had served His Majesty in India, Burma or Aden, or elsewhere under the Governor-General in Council; or

(b) after the commencement of Part III of this Act—

(i) serves in India as an officer of His Majesty's forces, or

(ii) is appointed to a civil service of, or to an office or post under, the Crown in India by His Majesty or the Secretary of State; or

(iii) holds a reserved post,

shall, if the person to whom the pension is payable is residing permanently outside India, be paid on behalf of the Federation or the Province, as the case may be, by,

or in accordance with arrangements made with, the Secretary of State, and be exempt from all taxation imposed by or under any existing Indian law, or any law of the Federal or of a Provincial Legislature.

**273.**—(1) His Majesty may by Order in Council provide for the vesting in Commissioners to be appointed under the order of—  
Provisions as to family pension funds.

- (a) the Indian Military Widows and Orphans Fund;
- (b) the Superior Services (India) Family Pension Fund;
- (c) a fund to be formed out of the moneys contributed and to be contributed under the Indian Military Service Family Pension Regulations for the purpose of paying pensions payable under those regulations;
- (d) a fund to be formed out of the moneys contributed and to be contributed under the Indian Civil Service Family Pension Rules for the purpose of paying pensions payable under those rules, for the investment of the said funds by the Commissioners, in such manner as, subject to the provisions of the Order, they think fit, for the administration of the said funds in other respects by the Secretary of State, for the remuneration of the Commissioners out of the said funds, and for any other matters incidental to or consequential on the purposes of the Order; and if any such Order is made, then, as from such date as may be specified in the Order, any pensions payable under the said regulations and rules, shall, subject to the provisions of subsection (3) of this section be payable out of the appropriate fund in the hands of the Commissioners, and not otherwise.

Before recommending His Majesty to make any Order in Council under this subsection, the Secretary of State shall consider any representations made to him by any of the existing subscribers and beneficiaries or by any persons appearing to him to represent any body of those subscribers or beneficiaries.

(2) any such Order as aforesaid shall provide that the balance in the hands of the Governor-General on the thirty-first day of March next following the passing of this Act in respect of the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund, and in respect of the moneys theretofore contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules shall, subject to the provisions of subsection (3) of this section, be transferred to the Commissioners before the expiration of three years from the said date either all at one time or by instalments, together with such interest as may be prescribed by or under the Order :

Provided that His Majesty in Council may, if it appears to him necessary so to do, extend the said period of three years.

(3) Any such Order as aforesaid shall provide for the making of objections by and on behalf of existing subscribers and beneficiaries to the vesting of any such fund as aforesaid in the Commissioners and, if any objection is so made in the manner and within the time limited by the Order—

(a) so much of any money in the hands of the Governor-General as represents the interest of the objector shall not be transferred to the Commissioners, but shall be dealt with as part of the revenues of the Federation; and

(b) in lieu of any pensions which might be payable out of the said funds to or in respect of the objectors there shall be payable out of the revenues of the Federation to and in respect of the said persons such pensions on such conditions as may be specified in rules to be made by the Secretary of State.

(4) Any such Order as aforesaid may, notwithstanding anything in this Part of this Act or in the regulations or rules relating to the fund in question, provide for the

making of such alterations in any pensions payable out of the fund to which the Order relates as may be reasonably necessary in consequence of the transfer effected under the Order.

(5) Any interest or dividends received by the Commissioners on sums forming part of any fund vested in them under this section shall be exempt from income tax in the United Kingdom, and estate duty shall not be payable in Great Britain, nor, if the Parliament of Northern Ireland so provides, in Northern Ireland, in respect of any pension payable under the regulations or rules relating to any such fund.

(6) In this section—

references to the Indian Military Service Family Pension Regulations or the Indian Civil Service Family Pension Rules shall be construed as including references to any regulations or rules which may be substituted therefor;

the expression "existing subscribers and beneficiaries" means in relation to the Indian Military Widows and Orphans Fund and the Superior Services (India) Family Pension Fund persons who have subscribed to, or are or have been in receipt of pensions from, those funds and, in relation to the funds to be formed out of the moneys contributed under the Indian Military Service Family Pension Regulations and the Indian Civil Service Family Pension Rules, persons who have contributed under, or are or have been in receipt of pensions payable under, the regulations or rules, not being persons who have surrendered or forfeited their interest in the Fund or, as the case may be, their interest under the regulations or rules;

references to pensions payable under the said regulations or the said rules do not include references to any pension or portion of a pension pay-

able otherwise than out of the moneys contributed and to be contributed under those regulations or rules;

reference to moneys so contributed, or to be so contributed, include references to interest upon such moneys.

(7) Notwithstanding anything in this Act, and in particular notwithstanding the separation of Burma and Aden from India, the provisions of this section shall apply in relation to persons who, before the commencement of Part III of this Act, were serving His Majesty in India, Burma or Aden, and after the commencement thereof continue to serve His Majesty in Burma or Aden, as they apply in relation to other persons who are serving or have served His Majesty in India, and accordingly the regulations and rules relating to any such fund may apply in relation to any such persons as aforesaid.

If any Order in Council is made under this section, and if provision in that behalf is made by the Acts or rules relating to conditions of service of persons serving His Majesty in Burma, the said regulations and rules may also extend to persons appointed to the service of the Crown in Burma after the commencement of Part III of this Act.

**274.** Notwithstanding anything in this Act, the Saving for certain Funds Acts, 29 and 30 Vict. c. 18. 37 and 38 Vict. c. 12 45 and 47 Vict. c. 45. India Military Funds Act, 1866, the East India Annuity Funds Act, 1874, and the Bombay Civil Fund Act, 1882, shall continue to have effect, but subject to the following adaptations, that is to say, that any thing to be done under the said Acts by or to the Secretary of State in Council shall, after the commencement of Part III of this Act, be done by or to the Secretary of State, and for any reference in the said Acts to the revenues of India there shall be substituted a reference to the revenues of the Federation.

**275.** **A person shall not be disqualified by sex for**  
**Persons not to be disqualified by sex for holding certain offices.** being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made—

- (a) by the Governor-General in the case of services and posts in connection with the affairs of the Federation;
- (b) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province;
- (c) by the Secretary of State in relation to appointments made by him:

Provided that any such agreement with respect to joint services and posts as is mentioned in chapter II of this Part of this Act may provide for the powers conferred by this section on the Governor-General and the Governor of a Province being exercised, with respect to the services or posts to which the agreement applies, by the Governor-General or a specified Governor.

**276.** Until other provision is made under the Transitional appropriate provisions of this Part of this Act, provisions. any rules made under the Government of India Act relating to the civil services of, or civil posts under, the Crown in India, which were in force immediately before the commencement of Part III of this Act, shall, notwithstanding the repeal of that Act, continue in force so far as consistent with this Act, and shall be deemed to be rules made under the appropriate provisions of this Act.

**277.—(1)** In this Part of this Act—

Interpreta- the expression "all India Service", "Central  
tion, &c. Service Class I", "Central Service Class II",  
"Railway Service Class I," "Railway Service Class II"  
and "Provincial Service" mean respectively the services  
which were immediately before the commencement of



Part III of this Act, so described respectively in the classification rules then in force under section ninety-six B of the Government of India Act; and

references to dismissal from His Majesty's service include references to removal from His Majesty's service.

(2) References in this Part of this Act to persons appointed to a civil service of, or a civil post under, the Crown in India—

- (a) include references to persons who, after service in India, Burma, or Aden, retired from the service of His Majesty before the commencement of Part III of this Act;
- (b) do not include references to persons so appointed who, after the commencement of Part III of this Act, become members of a civil service of, or hold civil posts under, the Crown in Burma or Aden.

(3) The inclusion in this Part of this Act of provisions expressly requiring the Governor-General or a Governor to exercise his individual judgment with respect to any matter shall not be construed as derogating from the special responsibility of the Governor-General and the Governors for the securing to, and to the dependants of, persons who are or have been members of the public services of any rights provided or preserved for them by or, under this Act and the safeguarding of their legitimate interests.

We shall now consider in some detail the effect of these provisions.

### **Tenure of Office**

By Section 240, certain points are made clear beyond the possibility of a doubt: (1) All people in the Civil Service, or who hold civil posts under the Crown, in India, hold office during His Majesty's pleasure. This is irrespective of the authority appointing, or the place of service.

The doctrine of tenure of office during His Majesty's pleasure, strictly interpreted, would, of course, mean that any public servant is liable to be removed at any time from his post, and his service dispensed with. Such a strict interpretation, however, is utterly impossible under the sections that follow. The only possible meaning of this provision, therefore, is: that it is intended to give a greater security than ever to the Public Servant in India. His Majesty can never act constitutionally, except on the advice of his Ministers; and his representatives in India, the Governor-General and Provincial Governors, must follow the same practice, except where otherwise authorised by law. The sections which follow vest so many extraordinary powers in these His Majesty's representatives in India that the constitutional doctrine mentioned above has no real significance, so far as any policy of effecting economy or Indianisation in the public service in India is concerned.

(2) None of these persons can be dismissed from the Service of the Crown, except by an authority which is equal to the authority that made the first appointment.

(3) Neither dismissal nor reduction in rank can be made, unless proper opportunity is given to the person concerned to make his defence, or show cause why the proposed action should not be taken against him.

To this last there are two exceptions, namely :

(i) A person may be dismissed or reduced in rank on the ground that he is guilty of conduct which has led to his conviction on a criminal charge ; and

(ii) If the Authority entitled to dismiss or reduce such a person in rank is satisfied, for reasons recorded in

writing by that authority, that it is not possible to give the person the opportunity to defend himself as required above, the above provisions may be dispensed with.

Even if a person holds a civil post under the Crown in India during the pleasure of His Majesty, a special contract may be made with a person who is not a member of the Civil Service of the Crown in India. If such a contract is terminated before the expiration of that period, or if the post is abolished, the Public Servant affected must be compensated on being required to vacate his post. In other words the condition that the employment is during the pleasure of His Majesty will not defeat the provision of a specific contract under which compensation is payable under any such contingency as mentioned above. This rather onerous obligation placed upon the Crown as an employer may be assumed to be inspired by the principle that the terms of public employment should be as liberal as possible. Reasons of national economy, or of public discipline and propriety, will not under this section, be allowed to obviate the right to compensation, even if the services of an officer are dispensed with on grounds which are to be found in the Inchcape Report, or such as those which insensed the whole Indian people against Gen. Dyer. The officer has a right to a proper trial or defence, except in cases where, for obvious reasons, such a privilege cannot be allowed.

### **Recruitment**

Section 241 provides for recruitment for the service of the Federation or of the Provinces. So far as the Federal services, or posts in connection with the affairs of the Federation, are concerned, appointments are to be

made by the Governor-General, or by such person as may be directed by him to do so.

Secondly, so far as the Provincial Services, or posts in connection with the affairs of the provinces are concerned, appointments are to be made by the Governor, or by such person as may be directed by the Governor in that behalf.

### Conditions of Service

The conditions of service of people serving the Crown in a civil capacity must be prescribed by the Governor-General, under rules made for the purpose, so far as persons serving in connection with the affairs of the Federation are concerned; and by the Provincial Governors, in so far as persons serving in connection with the Provincial affairs are concerned. These rules will, however, not apply to regulate the conditions of service of those persons who are employed temporarily on the distinct understanding that their employment may be terminated at one month's notice or less. The rules must be so framed that, so far as persons serving in a civil capacity before the coming into effect of the Provincial Autonomy's portions of the Act of 1935 are concerned, no order, which would alter any rule, or interpret to his disadvantage any rule regulating the conditions of service of an officer, could be made, except by the authority which, on the 8th of March 1926, was competent to make such an order; or by some person empowered in this behalf, by the Secretary of State.

This will effectively prevent the new Provincial Governments from regulating the conditions of service, whether with a view to economy or retrenchment, unless